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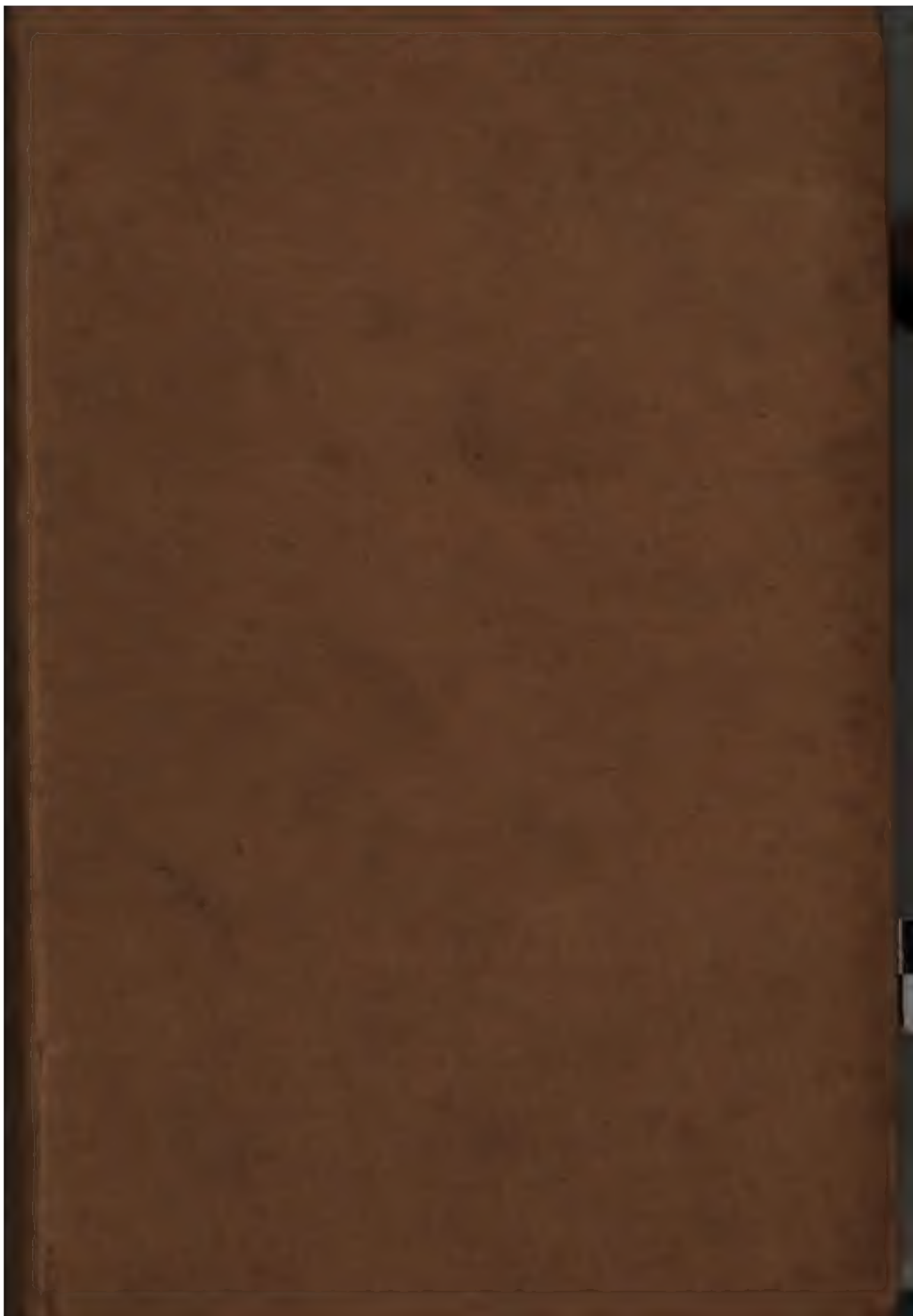
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CLIFFORD AND RICKARDS'S *LOCUS STANDI* REPORTS.

VOL. III., PART I.

CASES

DECIDED DURING THE SESSION, 1881.

BY THE

COURT OF REFEREES

IN

Private Bills in Parliament.

BY

FREDERICK CLIFFORD & A. G. RICKARDS.

BARRISTERS-AT-LAW.

LONDON:

BUTTERWORTH & CO., 7, FLEET STREET.

Also Publishers to the Queen's Most Excellent Majesty;

HODGES, FOSTER & CO., GRAFTON STREET, DUBLIN.

1882.

LONDON:
PRINTED BY PEWTRESS & CO.,
Steam Printing Works,
28, LITTLE QUEEN ST., LINCOLN'S INN FIELDS, W.C.

PREFACE TO VOL. III.

THE Reports now issued in Vol. III., include the CASES DECIDED BY THE COURT OF REFEREES IN PARLIAMENT during the Sessions 1881—1884.

As in the previous Volumes, the Cases of each year are arranged in Alphabetical order; and a complete Index of Cases is appended, together with an Index of Subjects, covering the Reports of the four Sessions 1881-4.

Vols. I. and II. of "CLIFFORD & STEPHENS" contain a Treatise on the Practice of the Court of Referees, with Reports of Cases heard during the six Sessions from 1867 down to 1872. Including the present Volume, the two series of Reports furnish a Record of the Decisions of the Court during the eighteen years from 1867 to 1884 inclusive.

TEMPLE, *February*, 1885.

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COURT OF REFEREES IN PARLIAMENT.

REPORTS FOR THE SESSION 1881.

. Where a Standing Order is quoted or referred to, the number is that of the Standing Orders for the Session 1882.

ANNAN WATERFOOT DOCK AND RAILWAY BILL.

Petition of THE CALEDONIAN RAILWAY COMPANY.

29th June, 1881.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE-PALMER, M.P.; Mr. PARKER, M.P.; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

New Railway—Connection with existing line—Reciprocal Running Powers sought, by new Company—Existing line worked by Third Company under Statutory Agreement—Reciprocal Running Powers opposed by them—Junction with existing line opposed by working Company—Representation—Railway Company subscribing to capital of another line—Distinct Interest.

The Solway Junction railway was worked by the Caledonian company under a statutory agreement which, as the latter company contended, prevented the Solway company from authorising the running of any trains over the Solway line by any other company. A new line, under a mile long, was now projected by an independent company to form a connection with the Solway line, which was twenty miles long, and with reciprocal running powers. The Solway company petitioned. According to the Caledonian company, this was a friendly petition, and they were not represented by it, while their interests under the agree-

ment, and as subscribers of a substantial portion of the Solway capital, were specially and prejudicially affected by the bill. They accordingly also petitioned :

Held, that there was *prima facie* ground for assuming that the Solway company had, during the term fixed by the agreement, parted with their powers of running trains upon their own line or of granting similar powers to other companies ; and *locus standi* therefore allowed to the Caledonian company, but only against the clauses referring to running powers.

The *locus standi* of the petitioners was objected to, because (1) no lands or property of theirs will be taken or interfered with ; (2) the petitioners, as large shareholders in the Solway company, have no exceptional or separate claim which, according to parliamentary usage, entitles them to be heard as shareholders, nor are any powers sought by the bill which will repeal their rights of working the Solway Junction railway, which is maintained by the Solway Junction railway company, nor have the petitioners any subsisting arrangements or parliamentary powers which require their consent to any of the powers sought by the bill ; (3) the petitioners have no parliamentary or other rights as regards the maintenance, construction, or alteration of the Solway Junction railway, nor have they a right to be heard on any question of junction with any other railway, nor assuming that they have any ground for *locus standi* (which the company deny) do they specify in what way the provisions as regards the junction sought to be authorised by the bill are not in accordance with

the Railways Clauses Act, 1863; (4) the petitioners allege no ground for a *locus standi* according to practice.

Venables, Q.C. (for petitioners): The bill is entitled "an Act for incorporating a company, and authorising them to make and maintain a dock railway and other works at Annan, and for other purposes." The object of the promoters is to make a dock railway of less than a mile in length connected with a railway called the Solway Junction railway, which at a place called Kirtlebridge joins the Caledonian system. The Caledonian company work that Solway Junction railway. Power is taken in the bill for the Annan company, "and the Solway Junction company respectively for the purposes of traffic of all kinds to run over and use in perpetuity with engines, carriages, and waggons," and so on "the railways of either company together with all stations, sidings," and so on "in or connected with the railway and stations of the company, and of the Solway Junction railway company respectively." That is to say, there are reciprocal running powers. It is rather a remarkable thing for a new company with a railway only three-quarters of a mile to take running powers over twenty miles of an existing railway (the Solway Junction). It is the more remarkable inasmuch as the Solway Junction railway itself, which is to have reciprocal running powers, has no rolling stock of its own. The Solway Junction railway company petition against this bill as well as ourselves but cannot be said to represent our interests. There are three names mentioned in the Act, and they are to appoint two other persons. Mr. Tahourdin, one of the three, is the secretary of the Solway Junction railway company, and has been so for several years; therefore it is not very likely that the Solway Junction railway company have a *bonâ fide* opposition to this bill. As the petition alleges, the Solway Junction railway, as originally authorised by an Act passed in 1864, joined our main line near the Kirtlebridge station and extended across the Solway Firth to the Maryport and Carlisle railway near Brayton, a distance of about twenty miles, having several branches, by which connections were effected with the Caledonian railway, the Glasgow and South-Western railway, the Port Carlisle railway, the Carlisle and Silloth Bay railway, and the Maryport and Carlisle railway; and the Solway company were empowered, but by agreement only, to run over and use certain portions of those several railways and certain stations thereon. Various subsequent Acts were passed in relation to the Solway railway, and among others an Act

called the Solway Junction Railway Act, 1867, by which we were authorised to subscribe towards the undertaking of the Solway Junction company any sum we might think fit, not exceeding £100,000; we accordingly subscribed and now hold £60,000 of preference shares in the capital stock of that undertaking. In 1869 another Act was passed, called the Caledonian Railway (Abandonment, &c.) Act, 1869, by which an agreement between the Caledonian and the Solway Junction companies, dated 22nd March, 1867, and set forth in a schedule to that Act, was sanctioned and confirmed. That agreement empowered the Caledonian company to work all the lines and branches of the Solway Junction company as they were successively opened for traffic and connected with the Caledonian system at Kirtlebridge, for 45 per cent. of the gross receipts for the first three years; 42½ per cent. for the next three years; and 40 per cent. thereafter during the remainder of the agreement; and the Caledonian company were to appoint and pay all necessary staff, to provide a sufficient quantity of rolling stock, and to run such passenger and other trains over the Solway lines as might be agreed upon between the two companies or, failing an agreement, as should be settled by arbitration. There were many other provisions, and the agreement (which was to continue in force for thirty years) provided that the Caledonian company should subscribe £60,000 towards the capital of the Solway Junction company out of a total capital of £480,000. It was also provided that "the Solway Junction company shall not, during the continuance of this agreement, accept of any subscription of money in stock, shares, loans or otherwise from any other railway company than the Caledonian without their consent thereto in writing." The Solway company are not entitled to run a single train over their own line, and yet by this bill they take power to run over this little Annan line of three-quarters of a mile in length; and the Annan company, not having any rolling stock of their own, ask power to run over this Solway railway which we exclusively work. The Caledonian company are very materially interested in the Solway railway, not only as large shareholders, but also as sole workers of the Solway railway, and they object most strongly to the powers over that railway sought by the bill. They believe that there is absolutely no precedent for granting an application such as the present by a projected company for power to run over and use a railway about twenty times the length of their own intended line, and all the stations, works and conveniences whatever of that railway, without the consent

of the company who, under parliamentary authority, are now working and are entitled for many years to come to work it, and upon terms in the settlement of which that company are to have no voice. We further object to any power being granted to the Solway company over other lines, without our consent, during the subsistence of the statutory agreement, under which their whole undertaking is worked exclusively by us; and we likewise object to the provision in the bill with respect to the junction between the proposed railway and the Solway railway, which is not in accordance with the provisions relating to junctions in the Railways Clauses Act, 1863. The proposed junction, though not with our line, is a junction which we shall work and which may affect our working and may cause danger and risk of accidents for which we should be responsible, and we are entitled to contend that the working of the junction would be injurious to us. But what we mainly rely on is that we have the right to object to any other company running over the line which we have the sole right of working. It is evident that the Solway company are willing that the Annan company should run over their line; but they will not be the sufferers; we are the people whose working will be interfered with.

Mr. RICKARDS: You maintain this proposition—that the working company has a right to object to the line they work being run over by another company?

Venables: Yes. The case most in point with this is the case of the *Alcester and Stratford-upon-Avon Bill* (2 Clifford & Stephens, 127). We, as the working company, are directly and exclusively concerned in the matter. The Annan and Solway companies, with their reciprocal running powers, might, if this bill were passed, work traffic in connection with the Glasgow and South-Western company, our competitors, whereas at present we get the traffic. It is hardly consistent with the agreement between us and the Solway company that they should admit another company to run over their line, which it is to be presumed they intend to do voluntarily, though they present a fictitious petition, because no company with three-quarters of a mile of railway would ask for adverse running powers over a line of twenty miles.

Pembroke Stephens (for the promoters): If the petition of the Solway Junction railway is a fictitious petition the two Caledonian directors on the joint board must be parties to it. The only clauses in respect of which a *locus standi* is claimed are the junction clauses and the running power clauses. With regard to the junction, it is not with the Caledonian line and

therefore they have no right to be heard in respect of that. With regard to the running powers, attention has not been called to the fact that the agreement begins thus:—"Subject to the provisions of the agreements scheduled to the Solway Junction Railway (Deviation) Act, 1865, and Solway Junction Railway Bill, 1867, and section 16 of the Act of 1865, the parties hereto agree with each other as follows;" and by reference to those Acts it will be found that running powers are given to other companies over this Solway junction line which is worked by the Caledonian company, so that the right of working by the Caledonian company is subject to the right of running possessed by other companies.

Mr. RICKARDS: It seems to me that the whole question is whether the working company has a right to object to the line they work being run over by another company?

Stephens: That depends very largely upon the wording of the agreement, because the only interest of the Caledonian company in this question arises under that agreement. Looking at the agreement, it is obvious that the Solway Junction railway company have not parted with the control or maintenance of their line; they have only agreed with the Caledonian company for running so many trains a day upon the line upon certain specified terms. The agreement does not bind the Solway company hand and foot to the Caledonian company, so that they cannot make agreements with any other company; and there is no provision that the Caledonian company are to have a voice in any agreements made with any other company or persons. The Solway company merely, as it were, hire these trains from the Caledonian company. The Solway company are also themselves petitioners. It is said that this is a fictitious petition, but it is the petition of the Solway company, and so far as the Caledonian company are shareholders in the company they are represented by the common seal. They are not only represented as shareholders, but by having two directors on the Board.

The CHAIRMAN: The whole question is—is it within the case where a company working and maintaining a line sought to be joined by another company was allowed a *locus standi* (*Alcester and Stratford-upon-Avon Bill*)? Or is it within the principle of those cases in which it has been decided that a company merely having running powers over another line cannot object to running powers being given to another company over that line?

Stephens: That is the issue.

The CHAIRMAN: Consistently with the agreement, could the Solway Junction company grant

power to another company than the Caledonian to run a special train over the line?

Venables: For thirty years from the date of the agreement the Solway company could not run a train of their own, nor could they give power to any other company to run a train a week.

Stephens: We say they could, because they are an existing company, and there are other companies with legal powers over the line.

The CHAIRMAN: I think, as it is not specially stipulated by the agreement that the Solway Junction company reserve power to authorise anybody else to use the line, the agreement must be construed as a grant of absolute and exclusive user subject to existing rights.

Stephens: The question is whether an agreement with the Caledonian company, which amounts to a hiring of vehicles of the Caledonian company by the Solway Junction company, is to entitle the Caledonian company to be heard to object to another company running over the Solway line.

The CHAIRMAN: It might be a legal question whether the Solway company under the agreement had the right without coming to Parliament to give power to any other company than the Caledonian company to use the line.

Venables: What other object could we have had in subscribing £60,000 but to get hold of the traffic?

Stephens: There is nothing in the bill that disturbs the agreement.

Mr. RICKARDS: I understand Mr. Venables only asks for a *locus standi* against particular clauses.

Venables: Against the clauses which give powers to the Annan company to run over the Solway railway. We do not press the question of the Junction.

The CHAIRMAN: Without saying how a Court of law would decide it, I think the point is so doubtful that we ought not to construe the agreement, which I think we should be doing if we disallowed the *locus standi*. The *locus standi* must be against the clauses which give the running powers.

Locus Standi Allowed against Clauses 70, 71, 72, and so much of the preamble as relates thereto.

Agents for Petitioners, *Grahames, Wardlaw & Currey*.

Agent for Bill, *Gale*.

BARROW-IN-FURNESS CORPORATION BILL.

Petition of THE ULVERSTON LOCAL BOARD.

9th March, 1881.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE-PALMER, M.P.; Mr. PARKER, M.P.; Sir JOHN DUCKWORTH; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Water Supply by Corporation—Extension of Time for Construction of Reservoir—Local Board of adjoining District—Priority of supply to, secured by Statutory Agreements—Alleged injurious affecting of, by Bill—Watershed, Occupation of by Promoters—Past Legislation—Time for Construction of Works under Special Act, how far a Contract between Promoters and Third Parties—Romford Canal Bill (2 Clifford and Rickards, 305).

A corporation, who supplied their own district, were under a statutory obligation to supply the local board of a neighbouring district with a fixed quantity of water in priority to any other supply whatever. This obligation was the result of certain concessions, embodied in special Acts of Parliament, made to the promoters by the local board. By one of the special Acts (1875) the promoters had been authorised to construct a certain reservoir, and the bill extended the time for its construction. The petitioners complained that the proposed extension of time would injuriously affect their right to a supply of water by the promoters, and that it also involved a prolonged monopoly of occupation of what had been, previously to its acquisition by the promoters, the watershed from which they supplied their own district. It was also argued that when the petitioners abstained from opposition to the original Act authorising the construction of the reservoir in question, it was on the assumption of its completion within the time therein-named. It appeared however that their right to priority of supply was unaffected by the bill, the penalties for non-supply being re-enacted; that by the special Act of 1875 the promoters were only required to supply the petitioners "from some or one" of the reservoirs therein named, and that as a

matter of fact they had been and were then supplying them from other of their reservoirs than the one in question; that with regard to the occupation of a watershed which had been originally used by the petitioners, that occupation was complete before the authorisation of the additional reservoir by the Act of 1875, and the petitioners' complaint was therefore one against past legislation; while with reference to the alleged understanding between the promoters and the petitioners at the time of obtaining the special Act of 1875, that the reservoir thereby authorised should be constructed within the period named in that Act, the case of the *Romford Canal Bill*, 1880, was cited to prove that the limit of time was an obligation imposed by Parliament upon the promoters, and not the result of a contract between the promoters and third parties:

Held, accordingly, that the petitioners were not entitled to a *locus standi*.

The *locus standi* of the petitioners was objected to, because (1) no lands, water mains, works, or other property of theirs will be taken or interfered with, nor their rights affected by the bill; (2) it is proposed by the bill to extend the period limited by the Barrow-in-Furness Corporation Act, 1875, for the completion of the works by that Act authorised, but the promoters are not under any statutory or other obligation to construct the said waterworks either within the period limited by that Act or at any time; (3) under section 36 of that Act, the petitioners are entitled to demand and take, and the promoters are required to supply and deliver to the petitioners at their existing works from the reservoirs belonging to the promoters, the quantities of water specified in the said Act in priority to any other supply, but this obligation is not in any way proposed to be altered or affected under the provisions of the bill; (4) the promoters deny that the construction of the waterworks authorised by the said Act of 1875 is essential to the due and proper supply of water to the petitioners; on the contrary, they allege that the existing works are sufficient and the storage capacity in the reservoirs ample to afford the full and continuous supply of water guaranteed to the petitioners by the said Act; and (5) they also deny that they have failed in carrying out the obligations imposed upon them by the said

Act, but even if true the petitioners have ample remedies at law; (6) the petition discloses no ground for a hearing according to practice.

Pember, Q.C. (for petitioners): Our opposition is directed against that portion of the bill which proposes to extend the time for the completion of waterworks authorised by the Barrow-in-Furness Corporation Act, 1875. We are the local and sanitary authority of Ulverston, and as such and as successors of the Ulverston water company are the proper parties to ensure a supply of water to our district. By the Ulverston Waterworks Act, 1852, the Ulverston water company was incorporated for supplying water within the limits therein defined, and was authorised to abstract water among other streams from Pennington Beck. By the Barrow-in-Furness Corporation Act, 1873, the promoters were authorised to make a certain reservoir and to impound and supply water also from Pennington Beck. As the result of negotiations between the parties and in consideration of the promoters being allowed to take water from Pennington Beck, section 22 of the same Act authorised the Ulverston water company (the possessors of the Act of 1852) to take from the promoters' said reservoir water up to 400,000 gallons a day, in priority to any other place in the district, free from any charge, and 200,000 gallons more on payment of certain charges to the promoters, the Ulverston water company ceasing to gather their own water and receiving it in bulk from the corporation instead. By the Ulverston Local Board Act, 1874, the undertaking of the Ulverston water company was vested in the petitioners, who were empowered to carry into execution the powers of the water company. Section 74 of that Act repealed section 22 of the Barrow-in-Furness Act, 1873, and section 75 enacted that "the local board shall be entitled to demand and take, and the corporation shall supply and deliver to the local board at the existing works of the water company at or near Pennington aforesaid, or such other works as may from time to time be substituted there, from the reservoir authorised by the Corporation Act, 1873, and in priority to the supply by the corporation of any water from such reservoir or the streams supplying it, to any other person or to any other reservoir or waterworks of the corporation, the following quantities of water, &c." Section 76 provides for laying down and maintaining in good order pipes between the reservoir and the waterworks, and section 77 provides that the corporation shall not divert or impound any of the waters included within the powers of the Act of 1873 before the reservoir authorised by that Act shall have been made and completed. The petition then points out how the corporation

were empowered by their Act of 1875, which we abstained from opposing, to make certain additional waterworks, including one called the Poaka Beck reservoir, and to impound certain other streams. Section 75 of the Corporation Act of 1873 is repealed and section 36 enacts as follows: "The local board of Ulverston, &c., shall be entitled to demand and take, and the corporation shall supply and deliver to the said local board at the existing works of the said local board at or near Pennington, or such other works as may from time to time be substituted there, from the reservoirs belonging to the corporation, namely, the Poaka Beck reservoir, the reservoir authorised to be constructed under the Corporation Act, 1873, and the reservoir by this Act authorised to be constructed, &c.;" and this supply is to be "in priority to the supply by the corporation of any water from any of such reservoirs, or the streams supplying the same, or to any other reservoir or waterwork of the corporation," and to the amount provided for by the Act of 1873. We are therefore entitled to priority of supply from any of the reservoirs of the corporation, including those authorised by their Act of 1875. Clause 11 of the bill, however, proposes to extend the period limited by the Act of 1875 for the completion of the waterworks by that Act authorised for ten years from the passing of the bill, and that on the expiration of that period the powers granted to the corporation for making those waterworks, or otherwise in relation thereto, shall cease to be exercised except as to as much thereof as is then completed. The provisions of the Acts of 1873, 1874 and 1875 were the result of agreements between ourselves and the promoters, and we object to the extension of time proposed by the bill as an evasion of part of those agreements as embodied in the Act of 1875, which provided for the construction of waterworks essential to our receiving a proper water supply. There being a watershed in which both the populations of Barrow-in-Furness and Ulverston are interested, we have allowed them to occupy the ground on condition of their giving us a proper water supply. They now propose to postpone for ten years, and perhaps abandon altogether, the construction of waterworks which are necessary to our being properly supplied.

The CHAIRMAN: Is not this like the case of a railway company, over whose unconstructed line running powers have been granted to another company, coming for an extension of time?

Pember: Not altogether. Here there is a monopoly of the watershed to our exclusion, and the bill involves a postponement of our rights

and an evasion of agreements embodied in special Acts, which agreements were the results of concessions made to us by the promoters in consideration of our consenting to their monopoly.

Mr. RICKARDS: Could traders, who had obtained specially favourable rates for their traffic under an Act for constructing a railway, object to a bill extending the time for constructing it?

Pember: The traders in that case would not have abandoned any pre-existing rights as we did when we practically abandoned the rights we acquired over Pennington Beck after the purchase of the Ulverston water company's undertaking.

Mr. RICKARDS: The question seems to be whether time was of the essence of the contract between yourselves and the promoters, when they obtained their Act of 1875.

A. G. Rickards (for promoters): With regard to that question, it was decided in the case of the *Romford Canal Bill* (2 Clifford & Rickards, 305), that the time for the completion of works is a statutory obligation placed upon promoters by Parliament, and not a contract between promoters and third parties. As to any suggestion that if the petitioners had known that the time for the completion of the works was going to be extended at a future time, so as to prolong the period of our monopoly of the watershed, they would not have approved our Act of 1875, in point of fact when we came to Parliament in 1875 for our Act the Ulverston water company were out of the field, and they were not in any sense a competing company. Our arrangement with the promoters remains in *statu quo*, whether the bill is passed or not. When the corporation obtained powers by their Act of 1873 to supply water to their district, that power was saddled with the condition that we were first to supply a certain quantity to the Ulverston company, now the Ulverston local board, and that condition remains absolutely intact. We are, however, by section 37 of our Act of 1875, only required to supply the Ulverston local board "from some or one" of the reservoirs therein named, and as a matter of fact we are and have been supplying it from the existing reservoir, exclusively of the one authorised by the Act of 1875. We could not, without incurring heavy statutory penalties therein enacted, supply any of our own district without first supplying the Ulverston local board. Those penalties are re-enacted by the bill. We do not at present require the subsidiary reservoir for the purposes of supply, and we ask for an extension of time to see how far our requirements may increase with the development of the district. The construction of this subsidiary reservoir does not

division of certain dues, rates, and charges, payable at the Portishead docks and those arrangements are not altered by the bill. The powers complained of in the petition are powers exercised by the petitioners and enable them the better to compete with the promoters who seek to possess the same powers in order to meet such competition, and the petitioners are not entitled to be heard against provisions for the better carrying on of existing competition; (5) the petitioners are not entitled to be heard on the ground of the powers of the bill being contrary to the public interest, even if they were so contrary, which the promoters deny; (6) the promoters deny that the enactments referred to in the petition will affect the property, rights, and interests of the petitioners; (7) the promoters deny that they are seeking any special privileges or any privileges not commonly possessed by the owners of docks; (8) the petitioners are not entitled to be heard to protect the interest of the ratepayers of Bristol who are seeking to promote their own interests, as they believe, and have approved of the bill; (9) the petitioners are not entitled to be heard against the power sought by the promoters in clause 52 of the bill in relation to warehouses and transit sheds and the petitioners cannot judge of the necessities of the promoters in that respect; the only objection of the petitioners thereto is on the ground of competition; (10) the powers sought by the promoters as to steam-tugs cannot be exercised within the limits of the Portishead docks; (11) the promoters deny that the powers in clause 27 of the bill would as alleged by the petitioners enable the promoters as they think fit to make bye-laws in conflict with the Harbours, Docks and Piers Clauses Act, 1847. The petitioners allege that those powers may, but not that they will be exercised to the detriment of themselves, but they show no ground for this vague apprehension; (12) the petition does not allege that the petitioners are ratepayers or owners of property in the City of Bristol nor are they so in fact, and they are not entitled therefore to be heard against clause 88 of the bill; (13) the bill does not deal with the purchase of the Portishead docks and the petitioners have petitioned against the bill for the purchase of those docks, and their right to be heard against such purchase is not disputed; (14) the statements made in paragraph 23 of the petition, even if true, only relate to powers of competition which, if existing and legal, the petitioners have no right to object to, and which, if now sought for, are only the better to carry on the competition which now exists between the

petitioners and the promoters; (15, 16 and 17) the fact that the promoters possess estates at Portishead does not affect the questions at issue, and the petition discloses no ground on which the petitioners are entitled to be heard according to practice.

The *locus standi* of the Bristol port and channel dock company was objected to on the following grounds:—(1) the bill does not seek power to take compulsorily or otherwise any lands, buildings, or property of the petitioners; (2) the petition states that certain arrangements have been made by statute as to the division of rates between the petitioners and promoters, but the bill does not repeal or alter those arrangements; (3) it does not appear from the petition, otherwise than by assertion, how the levying of dues at Bristol docks can diminish the trade at the Avonmouth dock of the petitioners, and even if it did, such diminution would not afford any ground for the petitioners to be heard; (4) the Bristol docks now compete with the docks of the petitioners, and if the provisions of the bill are such as would render such competition more effective this would not according to practice be a ground entitling the petitioners to be heard; (5, 6 and 7) the petition itself conflicts with the ground of competition set up, and as to the purchase bill therein mentioned, their right to be heard against it is not disputed; (8) the powers in clauses 12 to 15 (both inclusive) of the bill, and referred to in the petition, are powers, as the promoters believe, now possessed, or if not possessed, are in part exercised by the petitioners, and are now sought by the promoters to enable them to compete on more equal terms with the petitioners, and such provisions do not, even if they be not possessed by the petitioners, entitle them to be heard against the bill; (9) they allege no ground which according to practice would entitle them to be heard.

The *locus standi* of the Bristol port and channel dock warehouse company was objected to, because (1) the only ground on which they claim to be heard against the bill is that of competition, but they allege no such competition as entitles them according to practice to be so heard; (2—6) the bill does not authorise the promoters to purchase or acquire the undertaking, lands, buildings, or property of the petitioners either compulsorily or otherwise, and the petition discloses no ground which by the practice of Parliament entitles the petitioners to be heard.

The *locus standi* of owners, &c., of warehouses was objected to on the following grounds:—(1) no property of the petitioners will or can

promoters against the bill of the other promoters on the ground of competition. Just as in that case you admitted all the parties on this ground, I submit that we are now entitled to be heard when we, the Portishead docks, are to be exposed to a perfectly new competition with the undertaking in the hands of the corporation of Bristol, because not only is the existing Bristol dock itself to be extended by an increase of area, but the Bristol dock authority take power under this Act to reduce their rates in a way they are not authorised to do by existing legislation. Not only will they be entitled to do that by the power which they seek, but whereas under their existing powers they can only call in aid the borough rate to the extent of 4d. in the pound to make up any loss which may be occasioned to the docks, by the present bill they propose to remove that limit both as to amount and as to application. Therefore the bill would not only extend the area of the Bristol docks but would do so upon terms enabling the Bristol dock authority to enter into a new competition, a competition carried on by calling in aid the public funds to an unlimited extent, which is a power not now existing. The clause in the bill dealing with that question of the borough fund is clause 88:—"All expenses incurred by the corporation in carrying into execution the powers and provisions of this Act (except such of those expenses as are to be paid out of borrowed moneys) shall be taken out of the dock revenue, and all deficiency therein shall be met out of the borough fund." Under the Bristol Docks Transfer Act, 1848, section 57, they are at present for such purposes limited to a rate not exceeding 4d. in the pound. By the Portishead Docks Act, 1871, we were authorised to construct docks at Portishead, and the corporation of Bristol were empowered to subscribe £100,000 to that undertaking. They did accordingly subscribe that sum, and they appoint five directors of the Portishead docks out of a total number of ten. Both our dock and railway have been completed and opened for traffic at a cost of about £700,000. The dock, was, however, only completed in July, 1879, and no time has yet been afforded for the development of traffic. The Act of 1871 contains (sections 26, 27, and 28) provisions for certain onerous payments by us to the corporation in the case of vessels and steamers using the docks, having a tonnage of less than 1,200 tons register measurement in the case of sailing vessels, and of 800 tons in the case of steamers; and by the Bristol and Portishead Pier and Railways Company's Act, 1877 (section 17), further provisions are made with respects to those payments. It is

proposed by the bill to amend and extend those provisions of the Acts of 1871 and 1877. The preamble of the bill recites that the Portishead company, and the Avonmouth dock company "are able from time to time as they think fit to reduce and again increase all or any of the rates and dues payable to them respectively in respect of any particular class or classes of vessels or any description of cargo discharged therefrom at the works of those companies respectively, but no such power can be conveniently exercised by the corporation, by reason whereof they are unduly hampered in conducting the trade of the said port." Following upon this recital it is proposed to be enacted by clause 12 of the bill that, "notwithstanding anything contained in the recited Acts or any or either of them the corporation may by resolution reduce below the maximum thereby prescribed, and again increase, and so from time to time as they deem expedient, all or any one or more of the dues leviable by them thereunder or under the Act, on or in respect of anyone or more class or classes or subdivision of a class of vessels on or in respect of which the corporation are by the recited Acts, or any, or either of them or this Act authorised to demand and take any dues: provided that in any such increase they do not exceed the maximum prescribed by statute for such dues;" and by clause 13 "the corporation seek power to remit or return, if and when they think fit, the whole or any part of any dues in respect of any vessel or cargo wrecked, spoiled, damaged or injured, and to remit or return the whole or any part of any dues in any other circumstances which, in their judgment, make such remission or return reasonable." The corporation have the borough fund to cover their dock expenses. Then they take under this bill the power to remit or return the whole or any part of the dues for any reason which, in their judgment, may seem reasonable; that is to say, if they want to attract to the Bristol docks cargoes for the purpose of benefiting the Bristol merchants, they have nothing to do but to make a rebate of the dues and ships would go there to discharge instead of coming to Portishead docks. The only thing that would control them would be the difficulty of going up the river as compared with the advantage of deep water at the entrance of the river. That is the starting of a perfectly new competition upon us. Naturally we object to the powers so sought. Our powers as well as those of the Avonmouth company and of the corporation are alike regulated by the Harbours, Docks, and Piers Clauses Act, 1847, and any amendment of them as proposed by the bill would enable the corporation to introduce a new

element of competition with us at new and varying rates, and thus inflict serious injury and loss upon us in the conduct of our undertaking. That Act gives to the corporation as well as to ourselves all the powers required by dock owners to the fullest extent consistent with the public interest, and the special powers sought by the bill in this respect are most objectionable. No justification can be shown for such exceptional legislation, which, if sanctioned, would have the effect of enabling the corporation in their capacity of owners and managers of the Bristol docks at our expense and at the expense of the ratepayers to give exemptions, rebates and bonuses to merchants and shipowners having the control of the traffic, for the purpose of inducing them to unduly favour the Bristol docks and by means of such inducements to deprive us of traffic to which we are legitimately entitled. We object also to the proposal contained in clause 14 by which the corporation seek to compound by annual or other rents for the payment of tonnage rates payable to owners of vessels; and we submit that such power is unnecessary and uncalled for, as the provisions of the Harbours, Docks, and Piers Clauses Act, 1847, expressly define under what conditions such contracts shall be made, and no reason can be shown why the corporation should be enabled to make such contracts upon any other terms at their own discretion, thereby favouring particular shipowners or freighters at the expense of others. By clause 15 it is proposed to enable the corporation to "rebate to the owner of any vessel, or to the owner, consigner or consignee (as the case may require) of any cargo, the whole or any portion of the charges incurred for the towing of any vessel within any part of the port of Bristol, or for the discharging, unloading and removing of any portion of such cargo: provided that such rebate be made to all persons in respect of the like vessel and cargo in the like circumstances." By clause 16 of the bill the corporation are enabled "to make such reasonable charges as they think fit for trucks, barges, planks, gear and labour supplied and services rendered by them in shipping, unshipping, transshipping, landing, relanding, housing, unhousing, weighing, measuring, marking, taring, coopering, sampling, piling, unpiling, watching, insuring, loading, unloading, bargeing, removing, portering, and delivering of cargo, and for any other service with respect to cargo shipped, unshipped, warehoused or deposited at or removed to or from the corporation docks or works." By clauses 18—52 inclusive the corporation seek power (among other things) to erect and provide transit sheds, warehouses and other buildings, to appoint superintendents,

weighers and others to take rents and charges in respect of goods deposited therein and generally to become warehouse owners and warehouse keepers and carry on the trades of lumpers, stevedores and others; and by clauses 53 to 56 they seek to become steam-tug owners and to charge such sums as they think fit for the use of such tugs, and to prohibit any other tugs from being used for towing vessels within the corporation docks, except under license of the corporation. We object to the corporation becoming owners of steam-tugs, though this power only concerns us so far as it gives them increased means of competing with us. Clause 88, making the borough fund liable, is an indefinite extension of the power of the corporation with respect to deficiency as settled by "the Bristol Docks Transfer Act," 1848, and is most objectionable. We have a right to be heard against their altering their statutory position for the sake of enabling themselves to enter into a different competition with us.

Little, Q.C. (for the Bristol port and channel dock company, and also for the Bristol port and channel dock warehouse company): I represent what is called the Avonmouth dock and warehouses. The Bristol port and channel dock company were a company authorised in 1864 to make docks at Avonmouth; and the warehouse company were incorporated under the Joint Stock Companies Acts for the purpose of constructing warehouses on land purchased originally for the docks, power being reserved for the dock company to repurchase the warehouses. The Bristol corporation propose to establish warehouses in Bristol in competition with the Avonmouth dock warehouses. As regards the Avonmouth docks I pray in aid all that Mr. Pope has said on the subject of competition, our case being practically the same as his. Under the faith of arrangements made when our Act of 1864 was passing through Parliament (which arrangements they now seek to violate by clauses 6, 7, and 8 of the bill, against which they concede that we have a *locus standi*), we embarked our capital in the construction of our docks, and the corporation who, by another bill, are seeking power to buy us, now seek by this bill to carry on an undue competition with us for the purpose of cutting our throats, to use the expression of the chairman of the Bristol corporation dock committee, instead of buying us as a living and thriving concern. In carrying out our statutory powers, we have met with great financial difficulties. It is only recently that we have been able to obtain any return upon our large outlay, which exceeds £450,000, and we are still unable to pay any dividend

upon our ordinary share capital. To clauses 12—15, authorising the corporation to reduce dues, we object, in common with the Portishead dock company, regarding those powers as uncalled for and unnecessary, and as in contravention of the terms and conditions upon which alone the corporation by the Bristol Dock Act, 1848, were authorised to acquire the Bristol docks. Further we object to these powers because they will enable the corporation to compete unfairly with us for traffic by offering rates lower than those which would be remunerative either to us or to the corporation themselves, and by affording advantages and facilities by remission and composition for rates and rebates, which would equally place us at a disadvantage. We do not possess these powers; and they are sought by the corporation, while they are at the same time seeking to purchase our undertaking. If these powers are contained in the general law, the promoters do not want them; but we say they are asking for powers which they have not under the general law. They are seeking to alter their status and to get further powers of competition with us; and this being so we ought to be heard, either to say that they ought not to have the powers at all, or ought to have them with such modifications and conditions as would protect our existing status. Under our Act of 1864 they agreed with us on a certain then existing condition of things, and when they come to alter that condition we are entitled to go before the Committee and ask either that the *status quo* should not be altered, or, if Parliament should think fit in the public interest to alter it, that terms should be imposed on the promoters to prevent other parties to the agreement from being damnified. We further point out that the competition which the corporation would be enabled to create with us by means of clauses 12—15 would be the more unfair, as the corporation would be enabled by clause 88, to apply the borough fund to cover any loss which they might sustain in carrying on such competition at unremunerative rates. The effect of what is now proposed is not to make existing competition more effective, but to enable the corporation by putting their hands into the public purse to carry on a competition with private individuals whom they themselves have induced to lay out their money for the construction of docks, because it was on the faith of the arrangement of 1864 that all this expenditure was gone to by us. This is not like a case where a railway company comes for powers to shorten their line or to improve their curves. With regard to the case of the Bristol port and channel dock warehouse company, they were incorporated in 1875 for the purpose

of carrying on the business of a warehouse company, and under the powers of their Act of that year they bought a site for the erection of warehouses, depôts and other buildings, and undertook to erect warehouses to be used in connection with the Avonmouth dock. The Avonmouth dock was constructed after an arrangement under which the petitioners were and are entitled to participate in the dues and rates received by the dock company upon vessels of certain tonnages, and upon the goods discharged at the dock from such vessels. The petitioners have expended very large sums of money in providing warehouses and other conveniences and appliances in connection with the Avonmouth dock which were absolutely necessary to the working of the dock, and that expenditure was made by them upon the faith of the powers and privileges conferred upon the dock company after arrangement with the corporation. The bill authorises the corporation to provide warehouses (free and bonded) and sheds known as transit sheds, and other appliances and conveniences, and to discharge, unload and load cargo from and into vessels, and arrange with shipowners and others therefor, and by Part III. of the bill (clauses 18—52) various powers are conferred upon the corporation in this respect with a view to "the carrying on of the business of warehouse keepers and the taking of rents and charges for the use of such sheds, warehouses and other appliances and conveniences, and the making of special arrangements with certain trades, persons or companies." We are advised and believe that the corporation desire to erect additional warehouses, not for the purpose of meeting the requirements of the trader, but in order that they may compete with the Avonmouth dock and with our warehouses, and that it is with a view to such competition that the corporation seek the extensive powers which are set forth in the 52nd clause as to the establishment of transit sheds and warehouses. The corporation are promoting another bill in the present session whereby they seek power to purchase our undertaking upon arbitration terms. They are thus seeking on the one hand to acquire our undertaking, and on the other hand are by the present bill seeking power to diminish the value of that undertaking. The argument already used applies here, namely, that the competition which the corporation would thus be enabled to create with our warehouses would be the more unfair as the borough fund would cover any loss which they might sustain. The corporation are really setting up an entirely new competition, that is to say, they are establishing warehouses with the rates to fall back upon in

we, the dock authority, are not in the degree limited as regards any alterations. We may reduce our rates to what we please. There is no obligation to impose the same rates as they have at other wharves or at Portishead. But under the provisions of an old Act we cannot as to certain alterations without six months' notice. It is found to be practically inconvenient accordingly we take this power in the bill. That is a matter that does not concern the dock companies. As we recite in the bill, the Avonmouth and the Portishead Dock Companies "are able from time to time, as circumstances require, to reduce and again increase all the rates and dues payable to them in respect of any particular class or description of vessels or any description of cargo therefrom at the works of those companies respectively, but no such power can be conveniently exercised by the corporations whereof they are unduly engaged in conducting the trade of the said docks. With regard to clause 13 providing for the remission of rates, inasmuch as the Harbours Docks and Piers Clauses Act, 1847, is incorporated in the existing Acts, we have already power to remit rates in all cases where the cargoes have been wrecked, spoiled, or injured. But we seek further in the bill to be able to remit or return the whole or any part of any dues in any other cases which in our judgment may make the remission or return reasonable. That is to say, in seeking to obtain the power which the dock companies at the mouth of the Bristol Avon at the present time, but which we cannot exercise, because we must act strictly within the provisions of the Act of 1848 which restricts the docks to us. No doubt to this end we are improving our means of competition with the two dock companies, but it is only the railway company acts in seeking to improve its means of competition, by coming to the docks to straighten a bit of line or to improve the curve. We cannot remit at present in the bill that we may think reasonable, to represent the corporation of Bristol as the dock authority, and under the Act our power is limited and we cannot remit ratepayers with regard to remission in any way that the directors of a company can do without consulting their shareholders.

MR. RICKARDS: Surely the corporation of Bristol are the dock authority, would not they consult the ratepayers upon the remission of rates? Our powers are restricted by that Act

The CHAIRMAN: We have nothing to do with the question between you and your constituents. We must look to the dock authority as one body.

Clerk: At all events our taking that additional power in clause 13, namely, to remit in cases where it may seem to us reasonable, does not entitle either of the dock companies to be heard.

The CHAIRMAN: The question is whether it alters the character of the existing competition.

Clerk: We say it does not. We have already the power to reduce rates. We have already the power to remit rates where the goods have been spoiled or injured. We have already the power to compound for rates. The only extra power we take is to remit where we think it reasonable that a remission should be made.

Frere (Parliamentary agent): If you have all those powers already why do you take them in the bill?

Clerk: Because for the sake of convenience we like to have them all collected together in one Act. With regard to Mr. Pope's claim to a *locus standi* in respect of wharfage rights which would be interfered with by the extension of our dock limits, that is not alleged in the petition.

The CHAIRMAN: I do not think Mr. Pope insisted much upon that claim.

Clerk: As to the case of the warehouse owners, the answer is, that by section 21 of the Harbours Docks and Piers Clauses Act, incorporated with our Act, every dock company has the power to construct warehouses.

Mr. RICKARDS: Then why do you put that power in the bill?

Clerk: It is only as a matter of convenience. By the General Act we have the general power of establishing warehouses. But there are a number of small details which are not provided for by the General Act, which it is very convenient for us to have in carrying out our business, and we provide for those and some of the other matters to which I have already referred by distinct enactment, so that there should not be any dispute about our power to do the things provided for.

Mr. RICKARDS: Is express power taken in the bill to provide warehouses?

Clerk: Yes, by clause 24. Then we take power to appoint a superintendent which is not given in the General Act, but which is only incidental to the power to provide warehouses. We also take power to provide warehouses on certain quays of our own, with respect to which there was a question that does not affect the petitioners. Then all the petitioners make this allegation—that we are going to compete with them on unfair terms, because we are going for the first time to call in aid the borough rate to

an unlimited amount, we being restricted at present to a rate of 4d. That is an entire mistake. By section 64 of our Act of 1848 we are not to go to a borough rate of more than 4d. in the pound, "*except for the purposes of the necessary expenses of the maintenance and management of the docks.*"

Frere : It does not say "warehouses."

Clerk : Warehouses are a part of our general undertaking; the interpretation clause of the Act of 1848 expressly says: "The expression 'docks' shall mean the Bristol docks and all the lands, waters, buildings, erections, works, rates, tolls, profits, easements, and other real estate and chattels which, by virtue of the recited Acts or any of them are or may be respectively taken, held, or enjoyed, as part or in connection with the Bristol docks or for the purposes of the Bristol docks." Therefore the construction and holding of warehouses would come within those words "expenses of the maintenance and management of the docks." By this bill we are not enlarging our powers with regard to dealing with the borough fund under the Act of 1848.

The CHAIRMAN: We think your explanation is satisfactory so far as the warehouses are concerned. We *Disallow* the *locus standi* of the Bristol Port and Channel Dock Warehouse Company and of the Owners of Warehouses, and we also *Disallow* the *locus standi* of the Bristol and Portishead Pier and Railway Company and of the Bristol Port and Channel Dock Company, except so far as relates to those clauses against which a *locus standi* is conceded, viz. (clauses 6, 7, and 8) and also clauses 12 to 15 inclusive.

Leslie (Parliamentary agent): And against clause 88? That is the clause that allows the corporation to make good all deficiency out of the borough fund.

Mr. RICKARDS: We think they have that power at the present time under the words, "Expenses of the maintenance and management of the docks."

Leslie: Ought we not to be allowed a *locus standi* against clause 4, the interpretation clause which enlarges the dock limits?

Mr. RICKARDS: That question is not raised by the petition. The dock companies will have a *locus standi* against clauses 6, 7, and 8, and 12 to 15 inclusive and so much of the preamble as relates thereto.

Agents for Bill, *Dyson & Co.*

Agents for Bristol and Portishead Railway Company, *Martin & Leslie.*

Agent for Bristol Port and Channel Dock Company, Bristol Port and Channel Dock Warehouse Company, and Owners, &c., of Warehouses, *Rees.*

BRISTOL PORT AND CHANNEL DOCK AND WAREHOUSES BILL.

Petitions of (1) CORPORATION OF BRISTOL; (2) GREAT WESTERN RAILWAY COMPANY; (3) BRISTOL AND PORTISHEAD PIER AND RAILWAY COMPANY.

24th March, 1881.—(Before Mr. PRMBERTON, M.P., Chairman; Mr. PARKER, M.P.; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Transfer, optional, of Dock and Warehouse Undertaking—To Municipal Corporation—To two Railway Companies jointly—To either of two Railway Companies—Corporation opposing Transfer to themselves and to Railway Companies—Permissive Powers, objection to—Corporation as Competing Dock Proprietors—Competition, change in character of, by Transfer of Dock undertaking—Railway Companies as Ratepayers in Municipal Borough—Differential rating of Railway Companies—Borough Fund liable for deficit in Dock Revenue—Railway Company, distinct Interest of as Ratepayers—Depreciation in Value of Dock Undertaking, caused by Transfer of Rival Company—Past Legislation, Complaint of—Amalgamation of Dock Undertakings, as ground of Locus Standi.

There are docks at Avonmouth and at Portishead, on either side of the entrance to the Avon. The corporation of Bristol, in whom the dock system of that city is vested, subscribed largely to both the Avonmouth and Portishead docks, but each of these undertakings is in the hands of an independent company. In the Act of 1864, constituting the Avonmouth company, and in that of 1863, constituting the Portishead company, power was given to the corporation of Bristol to buy both the undertakings respectively. The power lapsed in both cases, but was now revived as regards Avonmouth by a bill promoted by the Avonmouth company, giving the corporation the option of purchasing the docks and warehouses within a certain period; and if this option were not exercised, giving powers of lease or transfer to the Great Western and Midland railway companies jointly, and in the alternative to either company. The bill was opposed (1) by the corporation of Bristol, who objected to the mode of transfer to

themselves, and also to the transfer to the railway companies, or either of them, on the ground of public policy and of special injury through competition; (2) by the Great Western, who, as ratepayers, objected to the transfer to the corporation, and who also objected to the transfer to their rivals, the Midland company; and (3) by the Portishead pier and railway company, who objected to the transfer both to the corporation and the railway companies on the ground that thereby the character of the competition between them and Avonmouth would be changed, and that the Portishead undertaking might be starved by means of any one of the proposed transfers:

Held, that all the three petitioners were entitled to a *locus standi* limited to the selling clauses; but the corporation were not allowed a hearing against the mode of transfer to themselves, such transfer being permissive only; and the Great Western company were not allowed a hearing against the sale to the corporation, having only petitioned against this power as ratepayers and not having shown in that character a distinct interest. The Portishead company were also allowed a hearing against the rate clauses in the bill.

The *locus standi* of the corporation of Bristol was objected to, because (1) the petitioners claim to be heard first against the powers of sale to themselves of the undertakings of the Bristol Port and Channel dock company and of the Bristol Port and Channel dock warehouse company, limited, and secondly against the powers of sale of those undertakings to the Great Western and Midland railway companies; but as regards the powers of sale to themselves, the petitioners have no right to be heard inasmuch as those powers are, as regards the petitioners, merely permissive, and as regards the sale to the two railway companies the petitioners will in no way be prejudiced, nor would any competition be caused by the sale between the undertakings to be sold or either of them and the docks of the petitioners, which does not now exist or which would entitle the petitioners according to the practice of Parliament to be heard against the Bill; (2) the Bill promoted by the petitioners, as stated

in their petition, has been withdrawn by them and is now no longer before Parliament; (3) the petitioners have not any such interest in the object and provisions of the bill as entitles them to be heard against it.

The *locus standi* of the Great Western railway company was objected to, because (1) no land, house, property, right, or interest of the petitioners will be or can be taken or affected; (2) they have no rights or special interests in or regarding either of the undertakings, the sale of which to the corporation of Bristol is proposed to be authorised, and would in no way be affected by such sale; (3) as ratepayers in the city of Bristol the petitioners are represented by the corporation, and do not allege that they have, nor have they any interest as regards the bill distinct from that of the general body of the ratepayers; (4) as regards clause 58, the rights (if any) of the petitioners as to traffic to and from the Avonmouth dock would in no way be affected or prejudiced by the lease or sale of the dock to the Midland railway company, nor does the petition disclose any ground on which the petitioners are entitled according to the practice of Parliament to object to powers being granted for such a lease or sale; (5 and 6) the bill does not contain any provision affecting the petitioners, and they have no interest entitling them to be heard.

The *locus standi* of the Bristol and Portishead pier and railway company was objected to, because (1) no such competition between the petitioners and the corporation of Bristol, or between the petitioners and either of the railway companies would result from the bill, or from the transfer of the promoters' undertaking to be thereby authorised, as according to practice entitles the petitioners to be heard; (2) no lands, docks, or accommodation of theirs will be taken, used, or interfered with; (3) the depreciation in the value of the petitioners' dock undertaking, even if such depreciation were the result of the passing of the bill, would not entitle the petitioners to be heard; (4) the transfer of the undertaking of the Bristol, Portishead, and Channel dock company and the Bristol Port and Channel dock warehouse company to the corporation of Bristol, and the lease or transfer of such undertakings to the Great Western or Midland railway companies, as provided for by the bill, are not matters to which the petitioners are entitled to object, nor is any reason advanced which would entitle the petitioners to be heard according to practice; (5) as regards the sale and transfer of the undertaking of the promoters to the corporation, the principle of such a sale upon certain terms is distinctly recog-

nised by section 65 of the Bristol Port and Channel Dock Act, 1864, and the fact that the bill proposes to authorise such sale or transfer upon other terms does not entitle the petitioners to be heard against the sale or transfer; (6) the petitioners do not allege that they are rate-payers within the borough, and even if they did so, would not be entitled to be heard with reference to the application of the rates by the corporation for dock purposes; (7) the petitioners have no such interest in the objects and provisions of the bill as entitles them to be heard.

Clerk, Q.C. (for the corporation of Bristol): The bill is for authorising the sale and transfer or lease of the undertakings of the Bristol Port and Channel dock company, and of the Bristol Port and Channel dock and warehouse company, limited, and for other purposes. It recites, that "by section 65 of the Act of 1864, it was provided that the corporation, if thereafter authorised by Parliament so to do, should be at liberty to purchase the undertaking" of the Bristol Port and Channel dock company, or what we will call the Avonmouth dock company, authorised by that Act, upon certain terms therein mentioned, which purchase, however, was not to be made unless with the consent of the company after the expiration of ten years from the passing of that Act. Those powers have lapsed. Then the bill recites that the corporation have not been authorised by Parliament to purchase the company's undertaking, and that it is expedient that provision be made for such sale and transfer, if the corporation elect within a limited period to purchase, and that the corporation should at the same time be empowered to acquire if they think fit the undertaking of the warehouse company. The bill accordingly contains provisions to carry out this transfer, and goes on to provide that, in the event of the corporation not electing to purchase within the period limited, the promoters may lease their respective undertakings, or any part thereof, to the Great Western railway company and the Midland railway company, or either of them; and the necessary powers are given to the two railway companies. The corporation of Bristol do not object to the principle of the purchase by them of the two undertakings, but they object to the mode of acquiring the property which is proposed in the bill. We were ourselves promoting in this session a bill for the purchase of those undertakings, though the bill has now been withdrawn. We object to the open arbitration proposed by the promoters, and submit that the basis of arbitration should be defined, and that a longer term should be given us within which to make our election. There are two

dock companies at the mouth of the Avon, the Bristol Port and Channel, or the Avonmouth company, on the Gloucestershire side, and the Portishead docks on the other side; the one company being incorporated in 1863, and the other in 1864. No doubt the power offered to us is permissive, but it is subject to the serious alternative, that if we do not accept the terms of purchase, the promoters may go to the two railway companies, and a sale to them would be greatly to our injury. In 1863 and 1864, Parliament authorised us to purchase within ten years both the Portishead and the Avonmouth docks on terms very different to those mentioned in the bill. Parliament therefore looked upon us as the proper parties to possess the two undertakings at some time or other, and we ought to be before the Committee on this bill to ask that the terms should not be such as to render it difficult for us to purchase. We also strongly object to the proposed transfer to the two railway companies on grounds of public policy, as well as of special injury to us as the dock authority of Bristol. The railway companies, if possessed of these docks at the mouth of the Avon, could compete most unduly with us, as they might work their docks at a loss, recouping themselves by the increased traffic on their respective systems. Such competition, we say, would be the more unjust, because under the powers of the existing Acts, vessels above a certain tonnage may and do discharge their cargoes at the Avonmouth docks, and then proceed to the Bristol docks for repairs, and may there remain any length of time and reload without paying any dues to us for the use of the river and docks, on which we have expended such large sums of money. Both of the railway companies have access to our docks, and take traffic to and from them; but if they, or either of them, became possessed of the Avonmouth docks, the whole of their traffic, so far as they could control it, might be taken there. So impolitic has Parliament considered the possession of docks, or the means of sea carriage by railway companies, that under a Standing Order committees must make a special report of their reasons in cases where they grant such powers; but unless parties who object to the grant are allowed to appear, the Committee of course, cannot interfere.

Mr. RICKARDS: Parliament in making that Standing Order indicates that in their view it is extremely questionable in the public interests whether a railway company should be allowed to possess docks; but the question for us is whether this transfer will affect the interests of the corporation of Bristol as dock owners.

Clerk: We have expended a large sum of money in completing our docks, and the question is whether we are not to be heard against the transfer to railway companies of docks which compete with ours. In cases where railway companies have applied for power to become owners of steamers, steam-packet proprietors have been allowed a hearing, and the same ground of objection arises here, namely, that the railway companies may find it worth their while to charge low rates for their docks or their steamers, for the purpose of attracting traffic to their railway system. Even now we are considerably weighted in competing with these docks because we are several miles up the river, and we ask to be allowed to go before the Committee to protect ourselves against further unfair competition.

Saunders (for Great Western railway company): We claim to be heard on two points, first, as to the policy of the transfer of these undertakings to the corporation of Bristol, and secondly, as to the policy of their transfer to the Midland company independent of the Great Western company. Our objection to the purchase of the Avonmouth docks by the corporation is this: At present, as the Avonmouth docks are owned by an independent company, we have an effective security that they will do the best they can for the traffic of the Great Western as well as the Midland. But if the corporation become the owners of that dock, it will be their interest to divert traffic to the old docks and foster the traffic there at the expense of the Avonmouth docks; and thus we who are interested in the traffic to and from the Avonmouth docks should be prejudiced. The corporation might in fact do what it is alleged that the Mersey Dock and Harbour Board do with the Birkenhead docks—make a sort of waste-paper basket of them, and we ought to be before the Committee to see that proper provisions are inserted in the bill for the protection of our interests in that respect.

The CHAIRMAN: Do you object more to the transfer to the corporation than to the transfer to the Midland?

Saunders: We should object more to the transfer to the Midland. In amalgamation bills, where it is proposed to put two routes into the hands of one company, all parties having the choice of the two routes are allowed to be heard. Here we have the choice of two docks now in the hands of two separate interests, whereas if the power of sale to the corporation is exercised, the two docks will be in one hand. I admit that we have an agreement with the Avonmouth docks providing that the charges at those docks shall never be more than the

charges at the Bristol docks, which, to some extent, prevents any injury to us from excessive rates in the event of this amalgamation. Still there may be many other ways of decreasing the traffic of one dock and increasing the traffic of the other. Another way in which we may be prejudiced is as large ratepayers in Bristol. The bill provides that the purchase-money to be borrowed by the corporation, which is unlimited in amount, may be charged either upon the borough rate or upon the general district rate. That liability materially affects a railway company whose interest is distinct from that of the general body of ratepayers.

Littler, Q.C. (for promoters): You do not allege in your petition that you have a distinct interest?

Saunders: We raise objections to the rating, and allege that we are deeply interested as ratepayers in the liability which will attach to the municipality by reason of the proposed purchase. We also have a distinct interest from other ratepayers, because if the money is raised by the general district rate we are exempted from three-fourths except as to station buildings, whereas if it is raised by the borough rate we shall have to pay equally upon the railway and the station buildings. As to the Midland railway, we being competitors with them for traffic between these docks and numerous places in England, it is most important to us that these docks should not belong exclusively to that company, though we should not object to their becoming joint owners with us.

Mr. RICKARDS: Suppose both companies should apply simultaneously, but separately, to purchase, what would be the result?

Saunders: I suppose the undertaking would go to the highest bidder.

Mr. RICKARDS: Then you would only have to outbid the Midland and you would be safe.

Saunders: That process might go on *ad infinitum*, and in any case it would be unjust that we should have to outbid the Midland for the benefit of the promoters.

Pope, Q.C. (for the Portishead dock and railway company): Our dock and railway are on the Somersetshire side of the Avon, and we communicate with the Bristol and Exeter, while the Avonmouth dock is in communication with the Midland and Great Western. The question of competition between us and the Avonmouth docks is *res judicata* (2 Clifford & Stephens, 120). The effect upon us of the proposed sale of the Avonmouth dock to the corporation or the railway companies would be this: We are at present connected as a dock with the Great Western; and that company and the Midland company, who have equal powers, are at present

impartial and indifferent in their treatment of us, that is, they may send to Avonmouth or they may send to Portishead, but if the Great Western and Midland, or either of them, acquire the Avonmouth dock their interest becomes solely the Avonmouth interest, and the Portishead dock and railway may be starved.

Sir J. DUCKWORTH: Have the Midland company running powers to Portishead?

Pope: No, they have strong facilities to Portishead on the Great Western, who work the Portishead railway. As Portishead and Avonmouth have been recognised as competing, we have upon general grounds a right to be heard against a proposal to hand over Avonmouth to the railway companies or the corporation. There are also special grounds why we should be heard. Under the Act of 1874 the corporation have subscribed £100,000 to our dock undertaking, and appointed five out of the ten directors. Our dock was constructed, on the faith of arrangements made between us and the corporation, in the expectation of attracting a class of large vessels for which there was a want of accommodation at the port. This expectation having been realised, and the purposes of the corporation answered, they are now using every effort to divert traffic from our docks, and so deprive both the dock and the railway, which is, to a large extent, dependent for its traffic upon the dock, of their legitimate returns. The transfer of the Avonmouth dock to the corporation would enable that body to carry out a policy still more oppressive and unjust to us, for they would use the facilities and powers of the Avonmouth company, with the whole financial resources of the city, to divert traffic from Portishead to Avonmouth, while by means of their representatives on our board they would exercise a prejudicial influence in the management of our undertaking. The corporation would like to purchase both dock systems if they could get hold of them at their own price, and they lately promoted a bill (now dropped) for compulsorily acquiring both. On the other hand, the Portishead company promoted a bill which was defeated at the Wharnccliffe meeting through the vote of the corporation; and that being a competing bill we should have had a clear *locus standi* against theirs. At any rate we should be heard against a proposal which, as we say, is meant to depreciate the value of our undertaking, with a view to buy us at lower terms. Further, we say that, through the unlimited power of taxing ratepayers, possessed by the corporation, their competition with us, if they acquired the Avonmouth undertaking, might be ruinous to us. Again, we and the Avonmouth company are now under statutory

liability to pay to the corporation one-half of the tonnage dues on every vessel with cargo entering our respective docks, if the vessel does not exceed 1,200 tons register, or 800 if a steamer. If the Avonmouth docks became vested in the corporation that liability would cease as regards them, but would continue as regards ourselves and so make their competition all the more difficult for us to meet. This would be a grave change in the existing conditions of competition. Again, by section 65 of the Act of 1864, the corporation were authorised to buy the Avonmouth dock on certain terms; but there was a proviso that those powers should not be exercised till the corporation had equalised the rates and dues upon like matters receivable from the Portishead and Avonmouth companies. The effect of the bill is to give the go-by to that proviso because it contains no provision exempting the Portishead company from the payment to the corporation (who would then become Avonmouth) of the 50 per cent. of the tonnage dues. Whereas, too, Parliament has taken great care to secure equality of rates in respect of the two systems, so that the competition shall be maintained on equal terms, this bill provides (clause 80) that the Avonmouth rates shall henceforth be the Bristol dock rates, which are lower than the Avonmouth rates. As the corporation would also be able to call in aid the borough rate to make up any deficiency in the dock receipts, it is clear that the competition between the two systems after this proposed transfer would not be upon equal terms.

Littler, Q.C. (in reply): As to the corporation, we are not seeking to impose any powers upon them; we simply give them permissive powers to buy our undertaking on certain terms and within a certain period, in accordance with the powers which Parliament conferred in 1864, but which the corporation has allowed to drop. It is necessary to insert these powers in the bill, otherwise the corporation would not be able to buy; but if they do not choose to give us notice within three months they will have been put to no trouble or inconvenience. In fact, they say in their petition, that they do not object to the principle of these powers, but only to the mode proposed by the bill, and they submit that the plan proposed in their purchase bill, which the ratepayers would not allow them to carry out, is better than the one we suggest. Obviously the corporation have no business to be heard upon that point. A mere power to agree does not give a *locus standi*. By conferring these permissive powers we are adding to the rights and privileges of the corporation; we are not taking away any, or interfering with any.

The CHAIRMAN : But then you say that if the corporation do not exercise these permissive powers within a given period, other persons are to step in. First you recognise their interest in the subject-matter and then you limit them in the exercise of the power you give them.

Little : The corporation may say, "you shall not have the power to sell to other people;" but that cannot affect the question whether they can object to our giving them these permissive powers. Suppose in the bill we had taken power to sell to the Midland company without any option to the corporation, the corporation could not have had a *locus standi* to object to such a power.

Mr. RICKARDS : Though the corporation might not choose to avail themselves of the option to purchase, still they might have the right to object to the transfer of your undertaking to people whose interests may be prejudicial to their own.

Little : With regard to the proposed transfer to the Midland or Great Western, sections 54-5 of the Act of 1864, specify various purposes respecting which we may contract or agree with those companies. Those purposes include the lease and use of our undertaking. We are not now therefore really doing anything more than is already in our power by existing legislation; only instead of an agreement to let or lease to the companies, we are asking for power to sell. But this power to sell cannot in any way affect the rights of the corporation, because we do not propose to bring that power into operation till after the period has elapsed within which they, if they choose, may exercise the option of purchase.

Mr. RICKARDS : I do not see why the corporation should not be permitted to say, "we do not ourselves wish to purchase, but we do object to your transfer to the railway companies." The corporation say that the result of such a transfer would be to create a more effective competition with their docks.

Little : An improvement of existing competition has been held to give no right to a *locus standi*.

Mr. RICKARDS : This is rather a different case from the mere improvement of an existing competition.

Little : It is only putting the undertaking into the hands of persons who already have full power to do the same thing by agreement. Surely it does not lie in the mouth of the corporation to say that the railway companies shall not purchase us, after they themselves have refused to do so. With regard to the Great Western case, their main objection is to the power to sell our undertaking to their rivals, the Midland. Why should

we not be entitled to sell either to the Midland or to the Great Western? The Midland company do not object to our selling to the Great Western. The latter company have the power of buying our undertaking if they only bid high enough. Why should not the Midland have a similar power? If we are only empowered to sell to the Midland and the Great Western companies jointly, and to nobody else, the Great Western might say "We do not want to spend our money in this way," and they might thus stop the Midland company from buying and effectually hinder us from finding a customer. If, however, we have the power to sell to either company, it may be taken as certain that the two companies will come to a reasonable arrangement. Under the terms of sections 54-5 of the Bristol Port and Channel Dock Act of 1864, we are unfettered, and they are unfettered as to working and leasing our undertaking. They now want to fetter us as to the terms of sale, and we say they have no right to go before the Committee to ask that. If we proposed in the bill to sell to the Midland company alone, there might have been some ground for a *locus standi*, but as we give both companies equal powers, the Great Western have no right to appear against the alternative sale to the Midland. As to the claim of the Great Western company to oppose the sale to the corporation, that is a claim to be heard in respect of past legislation, for in the Act of 1864 the right of the corporation to buy was distinctly recognised. The Great Western company also ask to be heard as ratepayers, but they have no distinct interest. They say that the corporation may spend money out of the rates upon the docks at Avonmouth. If so, that will improve the traffic upon the Clifton Extension railway in which the Great Western company are interested as half owners.

Mr. RICKARDS : What they say is that if there is a deficiency in the dock receipts, and the dock expenses are charged upon the district rate, the Great Western company get an exemption to a certain amount, but if it is charged upon the borough fund they do not get that exemption.

Saunders : By clause 35 the corporation are to be empowered to borrow the necessary sum for the purchase of these undertakings upon the security of "the revenue of the respective undertakings, the district fund and general district rates, the borough fund, the borough rate."

Little : Yes, but the Great Western company are in no different position from any other ratepayer entitling them to any exemption. Under the Public Health Act no doubt they have ground for exemption as they do not reap the

advantages of the sewers, &c., like other rate-payers. But if anybody ought to be rated to the full rate in respect of the acquisition of these docks it would be the Great Western company, because if the dues in these docks are reduced by recourse to the borough fund, that company will get more traffic over their line in which they are jointly interested with the Midland company. With regard to the Bristol and Portishead pier and railway company, they say that if the corporation acquire our docks they will have a direct interest in starving Portishead. But the corporation will have the same interest that they always have had in receiving half the dues from Portishead and half the dues from Avonmouth. The only difference will be that the half of the dues they receive from Avonmouth will be expended in the maintenance of the docks at Avonmouth. It is said that the rates at Avonmouth dock would be reduced after the passing of this bill and that the Bristol dock rates are lower than those hitherto charged at Avonmouth. I find no authority for that statement, and there is nothing about it in the petition. Then, as to the sale to the railway companies the petitioners say that, if the Great Western company had the Avonmouth docks it would be their interest to starve Portishead. But the Portishead and Great Western companies have entered into an agreement, and as long as that agreement lasts it is the direct interest of the Great Western company to develop as much traffic as they can at Portishead. It would be their interest to do so if they purchased the Avonmouth docks, even at the expense of the Avonmouth docks; the Great Western would have as strong an interest in developing Portishead after this bill passed as before. Having regard to all the parties, the bill causes no such change of status as entitles them to appear, especially considering the fact that the bill expressly reserves all existing agreements, whoever may buy the undertaking.

The CHAIRMAN (after deliberation): In this case we have decided to allow the *locus standi* of all the three petitioners, but they must be limited to the selling clauses, which differ in each case.

Clerk: Do you exclude the corporation from objecting to the mode of sale to them?

The CHAIRMAN: Yes, that is merely permissive.

Mr. RICKARDS: The *locus standi* of the corporation will be against clause 58 (authorising sale to the railway companies), and so much of the preamble as relates thereto.

Clerk: It must be against clause 58, and consequent clauses.

Littler: It will mean everything relating to the sale to the railway companies.

The CHAIRMAN: The *locus standi* of the Great Western company will be against the clause authorising a sale to the Midland company.

Saunders: And the proposed sale to the corporation.

Littler: They have not objected in their petition to the sale to the corporation, except as ratepayers complaining of differential rating. The petition admits the principle of the proposed transfer to the corporation, and the Great Western cannot be heard to object to that which they have substantially admitted in the petition.

Saunders: We not only complain of the increased rating to which the Great Western would be liable if the charge for this undertaking were put upon the borough fund, but we showed it was possible that, if the corporation bought these docks, they might make the same use of them as it is alleged the Mersey Docks and Harbour Board make of the Birkenhead docks, that is, use them as a waste-paper basket.

The CHAIRMAN: Mr. Littler says there is no paragraph in the petition objecting to the sale to the corporation.

Saunders: The petition objects to it generally.

Mr. RICKARDS: It says that the petitioners do not object in principle to the transfer to the corporation.

The CHAIRMAN: The Bristol and Portishead pier and railway company will have a *locus standi* against clauses 3 (sale to corporation), 30 (as to rates), and 58 (sale to railway companies), and consequent clauses.

Locus standi of the Corporation of Bristol Allowed against clause 58, and consequent clauses, and against so much of the preamble as relates thereto.

Locus standi of the Great Western Railway Company Allowed against clause 58, and consequent clauses, and so much of the preamble as relates thereto.

Locus standi of Bristol and Portishead Pier and Railway Company Allowed against clause 3 and consequent clauses, clause 30 and consequent clauses, clause 58 and consequent clauses, and so much of the preamble as relates thereto.

Agent for the Bill, Rees.

Agents for the Corporation of Bristol, Dyson & Co.

Agent for the Great Western Railway Company, Mains.

Agents for the Bristol and Portishead Railway Company, Martin & Leslie.

CALEDONIAN RAILWAY (ADDITIONAL POWERS) BILL.

Petition of (1) THE GLASGOW AND SOUTH-WESTERN RAILWAY COMPANY.

28th February, 1881.—(Before Mr. PEMBERTON, M.P., Chairman; Sir JOHN DUCKWORTH; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Agreement between Railway Companies—Power to make Agreements with two Companies or either of them — Agreement with one Company scheduled by Bill — Opposition by second Company—Agreement, alterable, made statutory and unalterable—Board of Trade, Periodical Revision of Railway Agreements by—Railways Clauses Act, 1863—Regulation of Railways Act, 1870.

A railway company, authorised in 1880 to construct an independent line, to be connected with the system of two neighbouring companies, the Caledonian and the Glasgow and South-Western, was also authorised to enter into agreements with those companies or with either of them. The Caledonian company now promoted a bill scheduling an agreement under which they were to maintain, work, and manage the new line in perpetuity. The Glasgow and South-Western company petitioned on the ground that by the bill they would be excluded from the power of making agreements conferred by the Act of 1880, and that the statutory agreement now proposed would not, like the agreements contemplated under the Act, be revised periodically by the Board of Trade. On the other hand, the promoters contended that this revision was in the public interest and that the petitioners had no right to represent the public interest:

Held, that the petitioners had a *locus standi* against the clause scheduling the agreement and so much of the preamble as related thereto.

The *locus standi* of the Glasgow and South-Western railway company was objected to, because (1) the bill does not propose to take compulsorily any land or other property of the petitioners, or (2) to alter in any respect the Cathcart District Railway Act, 1880, which the petitioners admit was ultimately passed in a

form satisfactory to them; (3) no powers are sought to abandon the railway called the Cathcart District Railway Act, 1880, No. 3, or to diminish in any respect the security provided by that Act for its completion; but the petitioners have no running or other powers over or in respect to that railway, and would not have any right to be heard even against an application for power to abandon it; (4) the petitioners are not entitled to be heard to ask that railway No. 3 should be completed or opened previously to, or simultaneously with, the other railways of the Cathcart District railway company, especially as they did not obtain or even ask the insertion of any such provision in the Act authorising those railways; (5) the Cathcart District Railway Act, 1880, to which, as passed, the petitioners were assenting parties, expressly contemplated that the railways authorised by that Act might be maintained, managed, and worked by the Caledonian railway company, to the exclusion of the petitioners; and the petitioners are not entitled to be heard against the confirmation of an agreement to that effect; (6) the petitioners are not entitled to be heard in respect to any limitation of the powers and interests of the Cathcart railway company, which the petitioners allege would result from the confirmation by the bill of the agreement set forth in the schedule thereto; (7) the bill does not alter in any respect the provisions of the Caledonian and Glasgow and South-Western (Kilmarnock Joint Line) Act, 1869, referred to in the petition; and the petitioners are not entitled to be heard upon an averment that an alleged arrangement, which they state was carried into effect by that Act, will be affected by the bill; (8) the alleged arrangement referred to, even as stated by the petitioners, relates only to a through route between Glasgow and Kilmarnock, and the petitioners do not allege, nor is it the fact, that the traffic of that through route would be in any manner affected by the bill; (9) the petitioners do not allege or disclose any such interest in the provisions of the bill as entitles them to be heard against it.

Pope, Q.C. (for Glasgow and South-Western company): The Cathcart railway is a small suburban line in the neighbourhood of Glasgow, connecting the Crosshill district and the district about Queensberry with the centre of Glasgow. It was authorised last year as a railway joining on to the Caledonian, and also connected by railway No. 3, with the Paisley line, that is, a joint line of which the Caledonian and the Glasgow and South-Western companies are owners, thereby giving the Glasgow and South-Western company access to this little suburban

line. In the House of Lords' Committee last year there was an attempt to omit the construction of line No. 3, the effect of which would have been to connect the Cathcart railway only with the Caledonian line. We objected to this departure from the bill as authorised in the first House, and the promoters were accordingly required to make line No. 3. Moreover, by section 59 of the Cathcart Act, the Cathcart company were authorised to enter into agreements with us as well as with the Caledonian company. The bill schedules and confirms (clause 4) an agreement between the Caledonian company and the Cathcart company, by which the former undertake to maintain, work, and manage the Cathcart line in perpetuity. Thus, if the bill passes, we shall have no chance of making an agreement with the Cathcart company, as we might have done under the Act of last year, subject to the provisions of the Railways Clauses Act, 1863, and the Regulation of Railways Act, 1870, and subject also to the approval of the Board of Trade and to revision by the Board every ten years. Our status under the Act of last year is thus to be altered, and we have a right to oppose such alteration.

Venables, Q.C. (in reply): No ground has been shown for asking, as the petitioners ask, that the Cathcart line shall not be opened or worked until railway No. 3 is completed and opened. Last year's Act empowered the Cathcart company to make that railway, but did not compel them to do so. In like manner the Act permitted the Cathcart company to make agreements either with us or with the Glasgow and South-Western, but did not compel them to make such agreements in either case. They have elected to make an agreement with us. What right have the petitioners to object? As to the revision every ten years of any agreement under the Act of last year, that is a power given to the Board of Trade in the public interest, not in the interest of any company.

The CHAIRMAN: But the public interest in this instance may be served by a company.

Venables: The petitioners do not represent the public interests; they represent their own interests. They would not be heard by the Board of Trade to show that their railway would be injured if we had a working agreement with the Cathcart company.

The CHAIRMAN: At the end of ten years they would be heard to say that their railway would serve the public better.

Venables: It is for financial reasons that these perpetual agreements are constantly scheduled to Acts, so as to enable lines to be made which would not otherwise be made. The petitioners

say that railway No. 3 which is connected not with their line, but with the joint line of the two companies, will probably not be made. We do not come for an abandonment bill, and if we did the petitioners could not be heard; but the legal obligation to make that line, whatever it may be, remains as it was. There is not a single case in which a railway company, merely on the strength of its being an adjacent railway, and being interested in a certain junction being made, has been heard against an abandonment. If the petitioners have no right to be heard against an abandonment, still less have they a right to be heard against legislation which may diminish the probability of the line being made. This is merely the common case of the substitution of an unalterable agreement for an alterable agreement. The companies had the power of making an alterable agreement at any moment, but under such an agreement the probability is that the money could not be raised, and the petitioners are not persons entitled to interfere in that financial question. They will not be the worse for what is proposed to be done. They will, it is true, be deprived of the contingent power of making an agreement, but they do not say they have tried to make one. Practically, when a large company takes up a small company and makes a working agreement with it, any other large company is thereby excluded. We do no more than that.

Mr. RICKARDS (to Mr. Pope): Do you ask for a general *locus standi*?

Pope: No; only with reference to the agreement.

The CHAIRMAN: We think so far as that is concerned that we may allow the *locus standi*.

Locus standi Allowed against clause 4 and so much of the preamble as relates thereto.

Agents for Glasgow and South-Western Railway Company, *Sherwood & Co.*

Petition of (2) BLYTHSWOODHOLME BUILDING COMPANY (LIMITED).

Railway Hotel at Terminus—Hotel Proprietors, opposing erection of, by Railway Company—Competition between Private Hotel and one proposed by Railway Company—Breach of Faith, alleged.

An hotel was built by a private company opposite a railway station, upon land bought from the railway company. After the sale of the land, and when the hotel was in pro-

gress, the railway company assured the purchaser that they did not propose to build an hotel. They now, however, applied for powers to apply a portion of the station buildings to this purpose. The hotel company asked for a *locus standi*, alleging breach of faith and competition:

Held, that as there had been no agreement binding the railway company not to establish an hotel, the petitioners could not be heard to allege a breach of faith, and that the threatened competition was not of such a nature as to confer a *locus standi*.

The *locus standi* of the Blythwoodholme building company (limited) was objected to, because (1) no land or other property of theirs is taken or affected; (2) the promoters incurred no obligation and entered into no agreement that they would not erect, complete, furnish, maintain, conduct, manage, or let an hotel, or appurtenances thereof, at their central station in Glasgow, or that they would not apply to Parliament for powers to that effect; (3) the promoters did not solicit the petitioners or their predecessors in title to purchase the land on which they state that they have erected an hotel for the purpose of such erection, or to erect or furnish such hotel; (4) the allegations of the petition amount merely to a statement that the promoters at a former period expressed to the petitioners an intention to use for their offices, and not as an hotel, the buildings which they erected at their central station in Glasgow; but the expression of such an intention, even though made, does not entitle the petitioners to be heard against the bill; (5) the competition which the petitioners allege would be created by the erection and maintenance by the promoters of an hotel at their central station in Glasgow is not competition of such a nature as entitles the petitioners to be heard; (6) they do not allege any such interest as entitles them to be heard.

Shiress Will (for the Blythwoodholme building company, limited): Clause 10 of the bill empowers the company to erect or complete, furnish and maintain an hotel and appurtenances thereof at their central station in Glasgow, and to conduct and manage or let the same. The buildings in which it is proposed to provide this hotel have already been erected under statutory powers conferred for the purpose of providing station and office accommodation alone. We are the owners and occupiers of a large and valuable hotel immediately opposite this station

and built upon land bought from the Caledonian company. The directors and officers of the company intimated both to our predecessors in title and to ourselves that they did not intend to erect an hotel at their central station, or to use their own premises as an hotel, and that our hotel would consequently secure the business naturally arising from its proximity to the railway station. In consequence of this intimation, £107,000 was given to the Caledonian company for the land on which the hotel stands. We paid the original purchasers £124,000; and the land and buildings together have cost us £250,000. During the whole period of the construction of the hotel the railway company stood by, knowing that it was in progress, but did not intimate their intention of applying for powers to erect an hotel of their own. When this intention became known, an intending tenant of our hotel, which is now completed and furnished and ready to be opened for business, refused to hire it, and it now remains on our hands. If the railway company obtains the powers now applied for, we shall be exposed to a competition which will make it impossible for us successfully to carry on the hotel, and the greater part of our outlay will be rendered wholly useless, to our great injury. Having been induced to incur a heavy outlay on the faith of the company's assurances, we are entitled to oppose the grant of these powers, which are outside the scope of a railway company, and are only granted in cases where hotel accommodation is needed in the public interest. Here there is no such necessity, and it is against public policy that railway companies should be empowered to compete with private traders under like circumstances. This application to Parliament by the Caledonian company is also a breach of faith towards us.

The CHAIRMAN: Is not the question of breach of faith rather a question for a Court of Equity than for us?

Will: This Court has given a *locus standi* in many cases where the bill promoted was in breach of an agreement. If a company, without seeking Parliamentary powers, proposes to do something in breach of an agreement, the remedy is then the Court of Chancery; but when Parliamentary powers are sought, in order to break an agreement, petitioners are entitled to a *locus standi* upon that ground. (*Metropolitan and St. John's Wood Railway Bill, Petition of Madame Titiens, 2 Clifford & Stephens, 190.*)

Mr. RICKARDS: In this case there was no prohibition to erect an hotel.

Will: It comes to the same thing, for the land is now appropriated by statute to one purpose, and without express Parliamentary

pany now promoted a bill for the construction of railways alleged to be in direct competition with one of the North British lines, the subject of that agreement. The North British company alleged that this competition would be in contravention of the agreement, and that their liabilities to the promoters would remain while those of the promoters would in part be avoided by the bill. The Caledonian company, on the other hand, contended that there was already an existing competition by virtue of their running powers over the lines in question, that the loss by the petitioners of the tolls charged by them in respect of these running powers was not a diversion of traffic which the Court would recognise, that the existing competition would only be improved by the construction of the proposed railway, and that the agreement did not preclude them from seeking the necessary powers for this construction: *Held*, that the petitioners were entitled to a *locus standi*.

The *locus standi* of the petitioners was objected to, because (1) no land or property of theirs will be affected by the bill; (2) the agreement, dated 20th March, 1867, upon which the petition is principally founded, confers special running powers upon the promoters over certain lines of railway of the petitioners, and upon the petitioners over certain lines of railway of the promoters, at certain rates therein specified; but neither party was thereby bound to exercise those powers, or debarred from carrying their traffic over the lines in question in virtue of other powers, or at other rates, or over other lines, or from applying for powers for any of those purposes; (3) the short spur or branch referred to in the petition has not been abandoned, but, on the contrary, is in course of construction and will very shortly be completed; (4) the competition which the petitioners allege would be created by the formation of the railways proposed to be authorised by the bill is not competition of such a nature as entitles the petitioners to be heard against the bill; in particular, what might result from the formation of those railways would not be a new competition, but merely a different means of carrying on a competition already existing; (5) the proceedings of last session, referred to in the petition, related to an application by the promoters of a totally different nature from the

present; and the allegations in the petition with reference to those proceedings are irrelevant to the present question; (6) the petitioners do not show any such interest as entitles them to a *locus standi* according to practice.

Clerk, Q.C. (for petitioners): The bill is one for enabling the Caledonian company to make railways connecting their Scottish central line at Larbert with their Grangemouth branch, and with the railway to Carron ironworks; and for other purposes. In 1865, when the Amalgamation Acts of the Caledonian on the one hand and of the North British on the other were passed, mutual arrangements were effected between the two companies, facilities and running powers being given to the Caledonian company over the portion of the Edinburgh and Glasgow railway between Edinburgh and Glasgow and over the Stirlingshire Midland line, a branch from the Edinburgh and Glasgow to the Caledonian railway at Larbert. In 1867 the Caledonian company promoted a bill for vesting in them the undertaking of the Forth and Clyde navigation, comprising the Forth and Clyde ship-canal, and, among other accessory works, the harbour and docks at Grangemouth, where the canal joins the Frith of Forth and a single line of railway from Grangemouth to our Stirlingshire Midland line at a point near Grahamstown station, by which the traffic from and to Grangemouth found its way to the south and went over the Edinburgh and Glasgow system, *via* Polmont. We opposed the bill for amalgamating the Forth and Clyde navigation, but withdrew our opposition upon the conditions set out in an agreement with the promoters, dated 20th March, 1867, which was scheduled to the Act. That agreement provides that we shall have the right, in perpetuity, to run over and use the Grangemouth railway, &c., at a certain fixed toll; that the management of the Grangemouth branch, &c., shall be vested in a joint committee; and that the Caledonian company shall have a like power to run over, for certain purposes, so much of our Stirlingshire Midland line as extends between the junction near Grahamstown with the Grangemouth branch and its junction at Larbert with the Caledonian railway. The railways now proposed would, if sanctioned, seriously prejudice our interests by injuriously competing for and abstracting from our system traffic which now passes over our Stirlingshire Midland line. No. 1 is so laid out as to run for its whole length parallel with that line at a little distance to the north of Grahamstown, so as to command the diversion from us of the traffic of the Falkirk ironworks, and other large public

works in the vicinity of its route, which traffic is now carried by our lines; and, in connection with railway number 3, it is so devised as to abstract the traffic of the great ironworks at Carron, now also exclusively carried in all directions over our railways. The effect of the construction of the railways proposed by the bill would be to enable the Caledonian company to divert from our system not only the traffic now arising or terminating upon the Stirlingshire Midland line, which traffic is protected by the agreement of 1867, but also the traffic between the Grangemouth branch and Larbert, for which the Caledonian company are bound to pay us certain tolls. The Caledonian company, as a condition to the withdrawal of the opposition to their bill of 1867, and according to the distinct terms of the agreement of 1867, are expressly excluded from carrying traffic arising or terminating on the Grangemouth branch, excepting at Grangemouth, but under the present bill they would be enabled to carry traffic to and from all points of the Grangemouth branch to the eastward of its junction with the Stirlingshire Midland line at Grahamstown station, in contravention of the spirit and intention of the agreement. But for the agreement, the Caledonian company could have had access to Grangemouth only by our conceding to them the reciprocal right of passing over the Stirlingshire Midland line, between Larbert and the junction at Grahamstown. We conceded this right under the agreement on condition that we should continue to have access to Grangemouth on payment of the same fixed tolls as the Caledonian company should pay to us for the privilege of passing over the Stirlingshire Midland section of the combined route. The advantage was to be mutual, each company paying to and receiving from the other the same fixed rates for their traffic over the route to which the reciprocal arrangements applied. But the effect of the bill would be to separate the reciprocal conditions, and deprive us of the advantage we now derive from the fixed tolls upon the Stirlingshire Midland section of the route, while the Caledonian company will continue to receive the full rates stipulated to be paid to them by us over the Grangemouth section, to our manifest prejudice and loss. In short, it is intended practically to repeal and set aside the provisions of the agreement of 1867. The Caledonian company now propose, notwithstanding the agreement, to construct a line of railway which will be entirely independent of everything contained in the agreement—a line running a few miles to the north of our Stirlingshire Midland line, and exactly parallel with it, in direct competition with our

railway, and to divert the whole of the traffic going from Grangemouth dock and harbour away to their system without passing over any portion of our line. Again, under the agreement they are limited to carrying the dock traffic of Grangemouth only, and are prevented from taking any traffic arising and terminating upon the line of the Grangemouth branch, otherwise than at Grangemouth; but by constructing this line they will take the traffic of the Carron works, which now passes solely on to our Stirlingshire Midland railway. They propose to enter upon a new competition which they are expressly excluded from doing under the agreement. Their attempt last year to enter into this direct competition in a different way failed upon our opposition; and they ought not to be allowed now to make the same attempt and exclude us from a hearing.

Venables, Q.C. (for promoters): Of course we are bound by the agreement of 1867, but we do not seek in any way to affect it. We propose to make a new line. Last year we did not propose to do the same thing in a different way, but to do an entirely different thing. We asked Parliament to do what Parliament requires a strong argument to induce it to do, namely, to modify and alter the agreement of 1867. We proposed in the public interests to acquire power to take traffic from Grahamstown, which we were expressly excluded from doing by the agreement of 1867. That application was refused, but we make no similar application now. What we now ask is to make a line to convey certain traffic which, as we say, we are already authorised to convey by the agreement of 1867, but in an inconvenient way. In other words, we propose to improve existing competition, not to originate competition. There is existing competition between us and the North British line for the traffic passing Larbert. We now propose to make another line, and it may be said that we take from them the tolls which they would otherwise have; but that is not a kind of competition which this Court has ever recognised. Our ceasing to pay the North British company certain tolls does not create a new competition. As conveyors of the traffic, we only compete with them for the same traffic for which we compete with them now.

The CHAIRMAN: Is that quite so? Is there not a fresh competition?

Venables: I am speaking of Grangemouth.

The CHAIRMAN: I was looking at the second article of the agreement by which you are entitled to use their line for certain traffic, but "not including any traffic arising or terminating on the Stirlingshire Midland or branches con-

nected therewith, or upon the Grangemouth branch otherwise than at Grangemouth."

Venables: Our new line will not compete for Grahamstown traffic; it does not go to Grahamstown. There is nothing in respect of Grangemouth to compete for. We are excluded from using our running powers upon the Grangemouth branch, but in fact there is no traffic there. The only question of traffic here applies to traffic other than that on the Grangemouth branch. The petitioners may apprehend that there will be some traffic hereafter, but there is no traffic now, so that in the exercise of its discretionary power there is no sufficient reason why the Court should give a *locus standi* on the ground of obstruction of traffic. As regards the agreement, our present application is consistent with it, because the agreement prohibits us from taking traffic over the North British line by means of running powers between certain places, and we are not proposing to take it between those places. As to Grangemouth, I repeat, there is no traffic; as to Grahamstown, we do not touch it; as to the Carron works, we already convey traffic by our Firth and Clyde canal from Carron. Probably it would be more convenient to us to take that traffic along the railway than along the canal, but that would be competition with ourselves. At any rate, it is an improvement of existing competition. We are not in any way interfering with the agreement, which is the principal subject of the petition. The North British company talk as though our right were our duty. We say we have a right, but no corresponding duty. As to competition, we say there is existing competition, and we seek to improve it.

The CHAIRMAN (after deliberation): The *locus standi* of the Petitioners is *Allowed*.

Locus standi Allowed.

Agents for Bill, *Grahames & Wardlaw*.

Agents for Petitioners, *Sherwood & Co.*

CARMARTHEN AND CARDIGAN RAILWAY BILL.

Petition of J. W. ROBINSON AND ANOTHER.

29th June, 1881.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. PARKER, M.P.; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Creditors of Railway—Lloyd's Bonds, Holders of — Creditors' Remedy barred by Statute — Existing Legislation, Complaint of.

In 1875 an arrangement Act was passed to adjust the liabilities of a railway company, and

it was thereby provided that creditors should send in their claims by a given date. Through some miscarriage certain holders of Lloyd's bonds did not receive the notice, or neglected to comply with it, and their claims were barred. A bill was now promoted for the lease of the railway to the Great Western company, and the bondholders in question petitioned on the ground that they were *bond fide* creditors and would have no remedy if the line were leased as proposed. As, however, the bill in no way referred to or affected the petitioners, whose complaint was really of past legislation, their counsel withdrew their claim to a hearing, and their *locus standi* was disallowed.

The *locus standi* of the petitioners was objected to, because (1) they claim to be creditors of the Carmarthen and Cardigan railway company, but do not show that their position will be in any way affected by the bill; (2) they complain of past legislation, which is not in any way affected by the bill, and their rights as creditors are not interfered with; (3) they have no such interests in the objects and provisions of the bill as entitles them to a *locus standi*.

Pope, Q.C. (for petitioners): We are holders of Lloyd's bonds in the Carmarthen and Cardigan railway company, and by an Act of 1875, under which the liabilities of the company in respect of those bonds were adjusted, it was provided that the holders of the bonds and other creditors should send in their claim within a certain time, but by some miscarriage we never got notice, or saw any advertisement that we were to send in our claims. The result was that our claims were barred, and though *bond fide* creditors we now have no remedy at law. The bill authorises the company to lease their undertaking to the Great Western railway company; but I am bound to say that, though the petitioners have a case of great hardship, and though there is abundant reason why Parliament should give them relief if they were allowed to be heard, I do not see that there is anything in the bill which affects them, and therefore I cannot argue that they have a *locus standi*.

Clerk, Q.C., was for the bill.

Locus standi Disallowed.

Agent for Bill, *Rees*.

Agents for Petitioners, *Burchells*.

CHESHIRE LINES COMMITTEE BILL.

Petition of (1) TOXTETH-PARK LOCAL BOARD.

16th March, 1881.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE-PALMER, M.P.; Mr. RICKARDS; and Mr. BÓNHAM-CARTER.)

Local Board, complaining of Railway Works in District—Sewer, apprehended interference with, by Railway—Road, Land on each side of Scheduled by Railway Company—Rateable value, apprehended Decrease of, through Railway Works—Railways Clauses Acts.

Certain associated railway companies proposed to take lands for the general purposes of their undertaking in the district of a local board, who were the urban sanitary authority. The board petitioned on the ground of apprehended interference with their outfall and other sewers which were upon the scheduled lands, though the bill did not propose to touch any of the sewers, and also on the ground of probable decrease in the rateable value of the district, through the depreciation in the value of residential property by the construction of railway works:

Held, that as the land would be bought by the railway company subject to existing rights, the petitioners had no *locus standi* in respect of injury to their sewers; and that they could not be heard to complain of any probable decrease in rateable value.

The *locus standi* of the Toxteth-park local board was objected to, because (1) the petitioners are not the owners, lessees or occupiers of any lands or buildings proposed to be taken or interfered with by the bill; (2) the bill does not propose to alter, divert, or in any way interfere with any streets, roads or sewers of which the petitioners are the owners, or which are under their jurisdiction; (3) if, as the petitioners seem to apprehend, any sewers or roads in their district, or over which they have control, will be prejudiced or interfered with by the taking of lands as proposed by the bill (which the promoters altogether deny), the general law is amply sufficient for their protection and they are consequently not entitled to be heard; (4) they are not entitled to be heard upon an allegation that the taking of

lands as proposed will injuriously affect other property, and decrease the rateable value of the petitioners' district, or upon a general statement that the ratepayers and inhabitants of their district will be injuriously affected by the bill; (5) the petitioners do not allege any ground in their petition, nor have they any interest which entitles them to be heard.

Pembroke Stephens (for the Toxteth-park local board): The bill authorises the Cheshire Lines committee to take and use for the purposes of the railway and other works certain lands and buildings in the township of Toxteth-park: We allege that in taking these lands certain sewers and roads in the district under our jurisdiction will be seriously interfered with and prejudiced. Further we say that, as these lands are situate in the midst of residential property, the works contemplated by the committee will affect the value of such property, and decrease the rateable value of our district. The bill does not show for what purposes the lands are to be used, but we fear the use of them for railway works will interfere with the proper and efficient sewerage and drainage of the district. Our out-fall sewer runs through the scheduled lands, and as the local authority we claim also to be heard in respect of scheduled land through which a road runs.

Worsley (for promoters): We do not take the road, which is not marked on the plans or described in the book of reference, but we take the land on each side of the road.

Stephens: We have a system of sewers constructed under the Public Health Act, and those sewers converge upon the main outfall into the river Mersey. These sewers were constructed subject to our supervision, in part by us, but mainly by the owners of property. The corporation of Liverpool have an interest in them, a local board higher up the river have an interest in them, and we have an interest in them. This main outfall sewer is in scheduled land, and the bill proposes to take that land compulsorily for the several purposes of the undertaking. We complain of that as an injury to the district, and an interference with our powers as the urban sanitary authority.

The CHAIRMAN: If the land is purchased by a railway company, it must be purchased subject to any existing rights and obligations.

Mr. RICKARDS: Existing easements in the land would be preserved without any special enactment.

Stephens: If the railway companies want to carry out some of the purposes of their undertaking which may be inconsistent with the proper flow of the sewage through the outfall, they would say that, having been authorised

to apply the land for these purposes, our rights were superseded, unless we obtain a saving clause. Then we say that the result of executing the works will be to diminish the value of property and so decrease the rateable value of our district.

The CHAIRMAN: Could not that argument be urged by local authorities in every case where railway companies ask for power to construct a railway?

Stephens: The Court has held that a landowner has a right to be heard if the result of a bill may be to render his property of less value to him. (*St. Helen's Improvement Bill*, 1 Clifford & Stephens, 52.) The local authority which represents the property of a district surely has an equal right to be heard, if the result of the bill may be to decrease the rateable value.

The CHAIRMAN: Will any of the railway works come near to the houses?

Stephens: To the very edge of them.

Worsley (in reply): The petitioners do not allege that we take their sewer. We do not in fact take it, and cannot do so. The local board has no right in the soil; they only have an easement. This easement we shall not affect, for we shall only stand in the shoes of the owner of the land.

The CHAIRMAN: The local board contend that a railway company clothed with this power to apply the land to the general purposes of their undertaking, stand in a different position from a private landowner. They say you might tunnel under the ground or so use the land as to interfere with the sewer.

Worsley: Suppose that instead of its being a sewer it was a right of way; we should get power to take the land, but we should not be able to extinguish the right of way.

Mr. RICKARDS: You would require special powers in order to enable you to stop up a right of way.

Worsley: So we should in order to enable us to interfere with a sewer; and there are no such powers in the bill. We only take the land subject to the rights which exist with respect to it. Assuming that the bill did give us such a power, there are ample provisions for the protection of the local board in the Railways Clauses Act.

The CHAIRMAN: You need not go into the question of the probable decrease in rateable value. We do not think the petitioners are entitled to a *locus standi*, either in respect of that allegation or of their sewer.

Locus standi Disallowed.

Agents for Petitioners, *Sharpe, Parkers, Pritchard & Co.*

Petitions of (2) CORPORATION OF LIVERPOOL; AND OF (3) OWNERS OF LANDS, &c., IN AND NEAR TOXTETH-PARK, AND OF CORPORATION OF LIVERPOOL.

Railways—Purchase of Lands for Works—Adjoining Owners, Injury to Property of—Amenities, Interference with—Public Park, Municipal Corporation Complaining of Injury to, by Proposed Railway Works—Villa Residences and Sites, Depreciated in Value, by—Statutory Restriction on Use of Land for Railway Purposes—Repeal of, by Bill—Lands Clauses Act—Practice—Double Petition—Municipal Corporation, Petitioning with Owners of Property, and Separately.

In 1861 an Act was passed for the construction, by the Cheshire Lines committee, of a railway which ran through land in the township of Toxteth-park, belonging to Lord Sefton. Section 52 of that Act provided that no part of Lord Sefton's Jericho estate should at any time thereafter be taken or used for a goods station, or for certain other specified works. In 1865 the corporation of Liverpool upon the faith, as they alleged, of this statutory restriction, bought from Lord Sefton a large estate, forming part of the Jericho estate, and converted the greater portion of it into a public park, reserving a margin around the park for the erection of villa residences on building leases, the reversions being vested in the corporation. In 1876, the Midland company, one of the three companies forming the Cheshire Lines committee, promoted a bill for appropriating part of the land subject to the alleged statutory restriction to the general purposes of their undertaking; but the bill was defeated upon the opposition of owners whose land was to be taken, and of adjoining owners, &c., of villa residences held under the corporation. The Cheshire Lines committee now promoted a bill seeking on behalf of the three companies substantially the same object as the bill of 1876. It was opposed (1) by the corporation of Liverpool and (2) by the owners, &c., of villas in Toxteth-park conjointly with the corporation, all alleging that the bill would repeal a

statutory guarantee, on the faith of which they had incurred a large expenditure, and alleging also the injury which would be caused to them as adjoining owners by the erection of railway works in a residential suburb :

Held, that as the construction of section 52 in the Act of 1861 was doubtful, and as a committee had already decided this point in favour of the petitioners, they were entitled to be heard against the repeal of the restriction ; though as adjoining owners whose amenities were interfered with, but whose lands were not taken, they would otherwise apparently have had no *locus standi*. The *locus standi* of the corporation was allowed on both petitions.

The *locus standi* of the corporation of Liverpool was objected to, on the same grounds (1 and 2) as were taken in objections 1, 4, and 5, to the *locus standi* of the Toxteth-park local board, and also because (3) the petitioners are not entitled to be heard upon any imaginary injury which they may apprehend by reason of the acquisition by the promoters of the land and buildings in or near Toxteth-park, and it will be sufficient time for the petitioners to complain when the promoters infringe, or attempt to infringe the 52nd section of the Garston and Liverpool Railway Act, 1861, to which the petitioners refer, if they have (which the promoters deny) any right to complain of any infringement of that section ; (4) the general law will fully protect the petitioners from any anticipated injury in the use of their main out-fall sewer, intersecting the said lands, and the vague objection that the inhabitants of the city of Liverpool will be injuriously affected by the bill does not entitle the petitioners to be heard against it ; (5) the petitioners have presented another petition against the bill, in conjunction with certain owners of lands in and near Toxteth-park on precisely similar grounds and cannot claim to be heard upon both petitions ; (6) the petitioners allege no interest which entitles them to be heard.

The *locus standi* of owners of lands, &c., in and near Toxteth-park and of the corporation of Liverpool, was also objected to, on grounds (1 and 2) before mentioned, and also because (3) the various and voluminous allegations in the petition suggest gigantic railway works and gigantic nuisances, but there is nothing in the bill which will enable the promoters to construct or establish either of these anticipated evils, and the petitioners are not entitled to be heard

upon imaginary injuries ; (4) the complaint in the petition that the promoters have evaded the Standing Orders is untenable, and even if the complaint were true, the proper tribunal for the examination of Standing Orders has not been appealed to, and it is now too late to discuss that question ; (5) the petitioners, the corporation of Liverpool, have another petition against the bill on precisely the same grounds and cannot claim to be heard upon both petitions ; (6) the petitioners do not allege any ground and have no interest which entitles them to be heard.

Pope, Q.C. (for corporation of Liverpool) : We claim a general *locus standi* in this case. The bill (clause 4) authorises the committee to take compulsorily certain lands in the township of Toxteth-park, on each side of an existing railway of the committee, between the St. Michael and Otterspool stations. This line was constructed under the powers of the Garston and Liverpool Railway Act, 1861, which provided (sec. 52) as follows:—

“No part of the land forming any part of the Jericho estate of the said Earl [of Sefton] in Toxteth-park shall at any time hereafter be taken or used for the purpose of a goods station or siding, or as a depôt for coal, coke, or merchandize, or for locomotive works, and no part of the said land shall be used for spoil banks or for the purpose of spoil.”

If clause 4 of the bill passes, the committee will be relieved from the obligations of this section so far as regards the land now scheduled. Under the authority of the Liverpool Improvement Act, 1865, we purchased from Lord Sefton, for the sum of £250,000, an estate of 371 acres adjoining or near to his Jericho estate. Of 258 acres of this land we have made a public park. The residue, forming the outer margin of the park, has been laid out as building sites for villa residences. Some of these sites are sold, others are now on sale on building leases for 75 years, the reversions being vested in the corporation. In 1861, and also at the time of this purchase from Lord Sefton, the scheduled lands were part of his Jericho estate, and in making that purchase we believed we were protected by section 52 in the Act of 1861. Should that section be repealed, as it will be under the bill, the park, the residences around it, and our land now on sale will be greatly injured in value. The corporation, therefore, petition as landowners who bought land on the faith of certain Parliamentary restrictions attaching to the adjoining lands then in the hands of the owner from whom they purchased, and they are seeking to be heard against the repeal of these restrictions and against the grant of powers which would

enable the Cheshire Lines committee to build a goods station, or locomotive shed, or a forge. Where power is sought to do under statutory sanction that which would otherwise give the party complaining a common law remedy, that party has a right to be heard against the bill which will interfere with that common law remedy. At present the owner of every villa on the margin of Sefton-park would have a right of action against the Cheshire Lines Committee, if they established a nuisance upon the adjoining land. This is, indeed, a stronger case, because each landowner has become possessed of his land in Sefton-park under the sanction of a Parliamentary guarantee. Section 52 in the Act of 1861 does not merely protect Lord Sefton; the words are general, and amount to a definite prohibition of a particular use of the Jericho estate "at any time hereafter."

Mr. RICKARDS: As I understand, those whom you represent are only in the position of adjoining owners to the scheduled land?

Pope: The land constituting the remainder of the Jericho estate has really been acquired by the Cheshire Lines committee from Lord Sefton by agreement, but as Lord Sefton cannot give them a title discharged from their statutory obligation, they come to Parliament for authority to take and use the land for any purposes of their undertaking—in other words, absolutely to repeal the existing restriction.

The CHAIRMAN: Section 52 of the Act of 1861 must surely have applied only to so much of the Jericho estate as was then authorized to be taken by the railway company, not to the whole estate.

Pope: The section applies to the whole of the land which the company might, under that Act, either compulsorily or by agreement, acquire from Lord Sefton. Even apart from the section, however, in a case like this in which a railway company are going to take land adjoining a public park, and apply that land to any purpose they please, the corporation owning the park ought to be heard.

Mr. RICKARDS: An adjoining landowner, if his land is not taken, is not allowed a *locus standi* to object to interference with his amenities.

Pope: If Parliament is going to extinguish any of our rights, we ought to be heard.

Mr. RICKARDS: Yes, if you have distinct rights.

Pope: The promoters are going to extinguish our common law right of objecting to a nuisance. If this is an injury not provided for in the Lands Clauses Act, then we have a *locus standi*. This is not an injury which would be compensated for under the Lands Clauses Act, but the

strength of my case arises from the provisions in the Act of 1861.

Pembroke Stephens (for owners of land, &c., in and near Toxteth-park and the corporation of Liverpool): We also are entitled to the benefit of the statutory provisions in the Act of 1861. The object of the bill is to evade or render these provisions nugatory, and the value of our property will thereby be seriously depreciated. Some of the petitioners opposed the bill of 1861, and section 52 was actually inserted for their benefit.

The CHAIRMAN: Do you contend that section 52 of the Act of 1861 applies not only to that part of the Jericho estate, and those acquired by the committee under the powers of that Act, but to any part to be afterwards acquired by them by agreement or otherwise?

Stephens: Yes; it means that at no time hereafter is any part of the estate to be applied to the purposes specified. In 1876 the Midland railway company (one of the three railway companies represented by the committee) made a similar attempt to obtain possession of these lands, and on the opposition of some of the petitioners, the bill was thrown out and the restriction in the Act of 1861 was upheld. Since 1861, on the faith of this restriction, a beautiful residential suburb has been created by the petitioners and others at a vast expenditure. And the character of the district would be completely changed by the erection of the railway works which seem to be contemplated here. The repeal of a similar restriction was recognised as a sufficient ground of *locus standi* in the *St. John's Wood* case, on the *Petition of Mdle. Titiens* (1 Clifford & Rickards, 46).

The CHAIRMAN: There was no doubt that the restriction applied in that case. Our difficulty here is whether the restriction of 1861 is not confined to the part of the Jericho estate acquired by the companies in 1861.

Stephens: If the Court has any doubt is it not a question for a Committee to decide?

The CHAIRMAN: If the same question was raised in 1876, it would be a strong step for us to prevent you from arguing a case then decided in your favour.

Worsley: We say it was not the same question and the parties were not the same, though the land we now propose to take was a part of the land then proposed to be taken. In 1876 the petitioners were landowners whose land was to be taken; here they are adjoining owners only.

Stephens: One of the petitioners here at all events is an occupier whose land is to be taken. Whatever the status of the petitioners of 1876 the question was fought upon the construction

of the section in the Act of 1861, and the bill was thrown out because of that restriction.

Worsley (in reply) : As to the allegation that the same question was decided in 1876, it is entirely irrelevant. The issue here is whether the present petitioners have a *locus standi* upon the bill before the Court. It may be that we did not object to the *locus standi* of the petitioners in 1876, because a considerable proportion of them were owners of land proposed to be taken.

Stephens : Some of the petitioners were owners of scheduled lands, but their opposition was got rid of by cutting out these compulsory powers, so that the bill was fought out on the simple issue of the restriction in the Act of 1861.

The CHAIRMAN: If the question of the construction of the clauses was argued, it does not matter whether the petitioners were owners or adjoining owners, because owners of land proposed to be taken could only have the benefit of the restriction as adjoining owners.

Worsley : It is clear that the restriction of 1861 only applies to the land taken or to be taken under that Act, otherwise it would be a covenant not on the part of the company, but on the part of Lord Sefton that he would not for all time use any part of the Jericho estate in a particular manner. It is not likely that Lord Sefton would so bind himself without consideration. The restriction was put in at his instance to protect his own land. If this is a covenant which runs with the land, our bill does not repeal it, and the petitioners will have the benefit of it, and can at any moment prevent us from doing the things which the restriction points at. The general words of this bill would not override such a covenant. The corporation of Liverpool do not deny that in buying this land they paid Lord Sefton something more than they otherwise would have paid in consequence of the restriction.

The CHAIRMAN (after deliberation) : In this case we consider section 52 of the Act of 1861 is open to so much doubt that we should not be doing right in refusing the petitioners an opportunity of being heard. We do not give an opinion upon the construction of that section, but we think that a *locus standi* must be allowed to any one of the petitioners whose title is derived from Lord Sefton.

Locus Standi Allowed.

Agents for the Corporation of Liverpool, *Sherwood & Co.*

Agent for Owners, &c., of lands in and near Toxteth-park, and the Corporation of Liverpool, *Rees.*

Agents for Bill, *Wyatt & Co.*

CLEATOR MOOR LOCAL BOARD.

Petition of TRUSTEES OF PORT, HARBOUR, AND TOWN OF WHITEHAVEN.

2nd March, 1881.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE-PALMER, M.P.; Mr. PARKER, M.P.; Mr. BONHAM-CARTER; and Mr. RICKARDS.)

Water Supply of Town—Interference with, by Neighbouring Town—Alternative sources of Supply—Right of Option as to, Interfered with.

The Whitehaven trustees obtained Parliamentary powers in 1849 to supply the town with water from an intake on the river Eden, two miles below the Ennerdale lake, out of which the river flows. In 1864 they obtained further powers to draw their supply of water directly from the lake, "instead of" from the old source; and they abandoned the old intake, without, however, taking up the pipes and mains connected with it. The Cleator local board now promoted a bill for supplying their district with water from a point in the Eden situated above this intake, and also took powers to intercept the water of three streams running into the river between the lake and this intake. The Whitehaven trustees petitioned on the ground that they retained a statutory option of resorting either to their former or to their existing source of supply, and that if they reverted to the old intake their supply would be prejudiced by the bill :

Held, that the language of the Whitehaven Acts left in doubt the question of the trustees' rights to an alternative supply; and the Court therefore gave the petitioners a general *locus standi*.

The *locus standi* of the petitioners was objected to, because (1) no property or interests of theirs were affected; (2) none of the works proposed were to be executed in or near Whitehaven, none of the proposed rates would affect that town, the petitioners had no direct or sufficient interest in the provisions of the bill, and any grounds stated by them were too remote; (3) the bill did not authorise any interference with the river Eden or with Ennerdale lake, but dealt with certain streams and waters over

which the petitioners had no statutory rights; (4) the petitioners alleged that two sources of supply were available to them—the Eden under an Act of 1849, and Ennerdale lake under an Act of 1864, subject to a limitation as to the amount of water to be taken; but the Act of 1864 only sanctioned a new and substituted mode of taking the same quantity of water directly in place of indirectly from Ennerdale lake as had been authorised in 1849, and the bill would not in any way restrict such supply; (5) the petitioners could not be heard on the ground of any supposed interest in obtaining a larger quantity of water hereafter, as the Acts of 1849 and 1864, on which they relied, expressly limited the quantity of water to be taken by them, and they were not themselves before Parliament with any proposals for repealing those limitations, or otherwise obtaining further water supplies for their district; (6) the petition set forth no grounds on which a *locus standi* could be granted according to practice.

Wright (for petitioners): We supply the town of Whitehaven with water, and we say that the bill will injuriously affect those whom we represent. Under the Act of 1849, which authorises us to undertake the water supply, we obtained power (section 8) to appropriate a portion of the water of the river Eden, not exceeding a million gallons a day, by means of an inlet pipe at Bankhouse, and to make and maintain the several works necessary to be made at or near the mouth of the lake, called Ennerdale lake, from which the Eden flows, for the purpose of impounding in, and drawing therefrom, a further quantity of water in lieu of and as full compensation for the quantity of water so to be taken and appropriated from the river. We have constructed the works authorised by the Act of 1849, including a main pipe from Bankhouse to Whitehaven. Then an Act of 1864 authorised us (section 7) in addition to our powers under the previous Act to take water directly from Ennerdale lake, from which the Eden flows, but so that the amount of water to be taken from the river and the lake together, or from either source separately, should not exceed the daily amount of water we were authorised to take in 1849. We contend that this section in the Act of 1864 gave us the alternative power to take water from Ennerdale lake itself, instead of from the river; and in point of fact, since 1864, we have drawn our supply principally from the lake itself, and carried the water to Whitehaven through the old set of pipes as well as through the new set of pipes. We say that we have a right either to take our supply from Ennerdale lake or from the old source, so that if Ennerdale lake runs low, we can go to our old intake on

the river. The bill proposes to intercept three streams which run into the Eden between Ennerdale lake and our old intake in the Eden, so that if we have the right still to revert to that old intake we may obviously be prejudiced. The words of section 7 in the Act of 1864 are as follows:—

“Instead of taking any portion of the waters of the river Eden as by the recited Act authorised” (i.e., by our old intake), “it shall be lawful for the trustees for the purposes of the recited Act and this Act, by means of the works by this Act authorised, to take directly from Ennerdale lake the same daily quantity as the trustees were authorised to take from the river Eden.”

The CHAIRMAN: Under that section could the trustees have taken half from the one source and half from the other?

Wright: Yes, that is what we say. There are no words which prevent the trustees from taking water from the Eden; the words are purely permissive. There was no provision requiring us to take up our old pipes; no new obligations as to sending down compensation water were substituted for our old obligation; and from the day the Act of 1864 passed till now, we have never ceased to use the old pipes as well as the new ones.

Pembroke Stephens (for promoters): But can you prove that for the last sixteen years you have taken a drop of water out of the river at Bankhouse?

Wright: We have had no occasion to do so, the lake having been full. We have the power of taking water in the alternative from either source, and if we had to revert to our old intake, we should be seriously damnified by the intercepting of these streams.

Stephens (in reply): Taking the petitioners' two Acts together, it is clear that the lake, not the river, was their authorised source of supply. It is true they were to draw their supply in the first instance two miles down the river, but that was only for the sake of economy. In 1864 they were to get precisely the same quantity, measured in the same way, directly from the lake. It may be assumed that people would not go to the trouble and expense of laying down in 1864 two additional miles of pipe, and taking the water directly from the lake instead of indirectly as before, if they had intended to avail themselves of the old intake. Moreover, the petitioners would have guarded themselves in the Act of 1864 by saying, “this new method of supply is to be without prejudice to our right to use the old intake.” If the question depends upon the amount of injury that would be caused to the petitioners, they have themselves reduced it to

a minimum by building a solid wall so as to make it impossible for them, till the wall is taken down, ever to get a drop of water, even indirectly, from the Eden.

The CHAIRMAN (after deliberation): We think we must allow the *locus standi* in this case. We could not disallow it without interpreting section 7 in the Act of 1864 as depriving the petitioners of all option as to their source of supply; and we should not like to do this without the intervention of a court of law.

Stephens: I assume that the *locus standi* will be limited to the works clause.

The CHAIRMAN (after discussion): The opposition of the petitioners will be limited by the allegations in their petition, but we shall not limit the *locus standi* otherwise.

Locus standi Allowed.

Agents for Bill, Sherwood & Co.

Agents for Petitioners, Holmes & Co.

COVENTRY CANAL NAVIGATION BILL.

Petition of OXFORD CANAL NAVIGATION COMPANY.

3rd March, 1881.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. PARKER, M.P.; Sir JOHN DUCKWORTH; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Canal Navigation, Links in Continuous Chain of —Tolls Chargeable on through System, altered by Bill — Existing Legislation Affected— S. O. 17 (Notice of intended Repeal of existing Legislation) — Canal Company, as Traders — Agreement, Proposed Statutory Alteration in, by one of Parties to—Statute, Effect of, upon prior Legislation — “Leges Posteriores Priores Leges Contrarias Abrogant.”

In 1768 the Coventry canal company obtained statutory powers to charge certain maximum rates on coal. In 1783, in order to develop the traffic on a continuous system of canals, they entered into a statutory agreement with the Oxford canal company and another company to reduce this maximum upon certain classes of coals. They now promoted a bill which (*inter alia*) proposed to increase the maximum rates of 1768. The Oxford company petitioned on the ground (1) that the bill would by implication repeal the agreement of 1783; (2) that an undue charge would be levied for the transit of road materials which now

were, with some limitations, free from toll on the promoters' system, the petitioners being interested as traders in the free carriage of such road materials as were for their own use; and (3) that they were entitled to ask for a revision of the alleged excessive mileage rates charged for goods over a part of the promoters' system:

Held, that (1) as the effect of the bill upon the agreement of 1783 was doubtful, the petitioners were entitled to a *locus standi* limited to the insertion of a proviso saving the agreement; but that (2) they were not as traders or otherwise entitled to oppose the discontinuance of the exemption from toll of road materials, and (3) could not be heard as to the alleged excessive mileage rates, the bill being silent upon that question.

The *locus standi* of the petitioners was objected to, because (1) no lands or property of theirs are affected; (2) no new means of competition with their undertaking is proposed by the bill; (3) they are not traders using the Coventry canal navigation or the Fazeley or Whittington brook section of the Birmingham canal navigation, and they do not represent the traders upon either of the said navigations or upon their own navigation, being merely the owners of a canal who take certain tolls from the traders making use of the same; (4) the petitioners are only mentioned historically in the bill as having been parties to an agreement under which the Fazeley and Whittington brook section of canal was transferred to the present owners thereof, but they have no interest in that transfer and have no interest in the re-transfer of the said section to the Coventry canal navigation company, and the said agreement, so far as the petitioners are interested therein, is not altered by the bill; (5) the bill does not affect the tolls chargeable upon the Oxford canal navigation by the Coventry canal navigation company, or the tolls chargeable upon the Coventry canal navigation by the petitioners, and the petitioners are not entitled to be heard upon the questions raised in their petition respecting the tolls so chargeable; (6) the petitioners are not entitled to be heard as to the repeal of the exemption from payment of tolls in respect of paving-stones, gravel, sand and other materials for making and repairing roads conveyed upon the Coventry canal navigation, or as to the reduction of the maximum tolls now chargeable on the Coventry canal navigation as proposed

by the bill, nor as to any other question of tolls chargeable upon the Coventry canal navigation, in which they have no interest; (7) the Acts relating to the petitioners' undertaking are not repealed or altered by the provisions of the bill; (8) the petitioners have no interest or title to be heard as to the matters mentioned in the petition, which refer entirely to the internal arrangements of the Coventry canal navigation company; (9) they have made no allegations on which they can be heard according to practice.

Shiress Will (for petitioners): This is a bill to alter existing legislation to which we are parties, and in accordance with S. O. 17 we have been served with notice calling our attention to such proposed alteration.

Pember, Q.C. (for promoters): These notices are only given *ex abundanti cautela*.

Will: The Oxford and the Coventry canals form one continuous system of water communication, and various agreements, confirmed by statute, have been made between the two companies. One of those agreements, made between the Trent and Mersey canal company, the petitioners, and the promoters, and dated in 1783, is recited in the bill. It provided that the tolls on coals from Birmingham to Fazeley, and upon all or any part or parts of the Coventry and Oxford canals, should not exceed one penny per ton per mile, with certain restrictions. The promoters now propose a schedule of maximum tolls upon coal, sand, stone, &c., for a distance of two miles and under of 1½d. per ton per mile; for any distance over two miles, 1½d. per ton for the first two miles; and a short distance clause provides that every fraction of a quarter of a mile is to be deemed a quarter of a mile. All this change of rates is in contravention of the agreement with us, confirmed as it has been by Parliament, and the change is proposed to be made behind our backs. If revised at all, the agreement of 1783 should be revised in the interest of all parties, but as it is we shall be bound to charge the old rate while they take power to raise the rate.

Mr. RICKARDS: You do not compete with the promoters, but you form part of a continuous communication?

Will: Yes. These three canal companies agree to charge such rates as they think expedient and for their mutual advantage, in order to foster and develop the traffic common to all. They say "if you will charge a penny a ton, we will make the same charge." The arrangement is made and approved by Parliament. All three parties are bound by it, but one of the three now tries to loose himself

from the bond, leaving the other two bound by the agreement.

The CHAIRMAN: Is there anything in the agreement which prevents any one party to it from terminating it?

Will: It is a perpetual agreement.

Pember: My contention would not be that I have a right to terminate the agreement without the authority of Parliament.

Will: Our canal system is 91 miles, and that of the promoters is 32 miles in length. We also claim to ask the Committee to revise certain charges levied by the promoters upon goods of all descriptions going from our system to theirs. Under an arrangement between us and the promoters, a new junction was made between the two canals at Hawkesbury, saving a mile of route over the Coventry system as compared with the old junction at Longford; but the promoters continue to charge upon all goods a mileage rate reckoned upon the assumption that the goods are carried to Longford where they do not really go. This charge for services not performed is exceedingly prejudicial to the interest of traders and to those of the petitioners.

The CHAIRMAN: Does the bill seek to legalise that method of charge, or to deal with it in any way?

Will: No. We say that the bill ought not to continue it, but it does nothing to remove the injustice.

The CHAIRMAN: The bill being silent upon this subject, it seems to me that the whole point is whether, under the agreement for maintaining this system of continuous water traffic, one of the constituent members of the agreement can alter his rates in the absence of the other.

Will: The objections deny that we are traders upon the canal, but so far as regards road material and stones we are traders because we pay tolls for road materials for our own use, which pass over the promoters' system and come on to ours.

Mr. RICKARDS: That does not make you traders.

Pember (in reply): Three points are raised in the petition. Two refer to matters dealt with in the bill, and upon which, therefore, the petitioners have a perfect right to demand (not a right to obtain) a *locus standi*. The third matter touched upon in the petition is the interlocking rates at Longford and Hawkesbury, and has nothing to do with the bill, and is not therefore relevant to the issue. The questions which are relevant are those relating to the tolls for paving stones and the general tolls. In 1783 there was a scheme for a complete net-

work of canals, including the Trent and Mersey, which, if the whole scheme had been completed, would have been in communication with us. An agreement was come to by the several companies interested as to the portions of the route which each was to complete; and another part of the general arrangement, in which the Oxford canal company were no doubt interested, was the schedule of tolls to be levied upon the continuous system.

The CHAIRMAN: The companies were incorporated by different Acts, and all of them previous to this Act of 1783, which confirmed the agreement.

Pember: Yes, but the provision with respect to paving-stones was not matter of agreement. That was legislation forced upon the Coventry canal by Parliament, in the public interest, before the Oxford canal existed. Parliament provided that paving-stones for repairing roads along the Coventry canal should not be charged unless they passed through a lock. This was one of the burdens which Parliament imposed upon us for the benefit of the public. If Parliament sees fit to remove that burden, it will do so; but the Oxford canal have no right to intervene in that discussion.

The CHAIRMAN: I think you need say no more on that point.

Pember: As to the toll question, our general maximum tolls authorised by Parliament were 1½d. a ton. Before the agreement was made they were 1½d.; they have remained 1½d. ever since; and the agreement subsists side by side with these tolls.

Mr. RICKARDS: The agreement is that you are not to charge your maximum tolls?

Pember: Yes, but the maximum rate exists in the Act notwithstanding the agreement. By the agreement with the Oxford canal company, we undertake not to charge more than a penny for certain sorts of coal going through the whole length of the canal from Birmingham, on to any part of the Oxford system. We do not charge more than one penny now; indeed, we only in fact charge one farthing; and, what is more, we shall not charge more than a penny when we alter the maximum in the way proposed by the bill. We leave the agreement untouched.

Mr. RICKARDS: Your maximum clause in the bill exceeds the sum you are bound by the agreement to charge?

Pember: Certainly, but the state of things is this: In 1768 Parliament authorises us to charge 1½d. a ton. In 1783 we agree with the Oxford canal company not to charge for certain coals more than one penny a ton a mile. We now come in 1881 not to repeal the agreement of

1783, which could only be repealed by distinctly saying that we did so, which we do not, but to repeal the legislation of 1768.

Mr. RICKARDS: If you charge the maximum which this bill would give you, you might be charging in excess of the tolls limited by the agreement.

Pember: The agreement of 1783 provides that for certain coal we will never charge the maximum rates secured to us by statute in 1768; but we did not thereby repeal those maximum rates, because there is other traffic to which those maximum rates apply, and in which the Oxford canal company have no interest.

Mr. PARKER: Then when the petitioners say that no part of the agreement should be varied or altered by the bill, you say that no part of the agreement will be varied or altered?

Pember: Yes. You can only repeal an Act of Parliament by express words in another Act of Parliament.

Mr. RICKARDS: Without express words a subsequent Act repeals a former one—*Leges posteriores priores leges contrarias abrogant*.

Pember: But the subject must be *in pari materia*. The fact that we have made this bargain with the Oxford canal company does not bind us with other folk; and the proposed legislation of 1881 merely supersedes that of 1768, leaving the specific legislation in favour of the Oxford canal company where it was, co-existing with the new maximum rates, just as it co-existed with the old rates.

The CHAIRMAN: You say that all that you propose to do is to change the maximum to be levied upon other people, but that this change will not affect the agreement as to particular traffic sanctioned by Parliament in 1783. There would be no question upon this point if there was a proviso that nothing in the bill should affect the agreement of 1783. We have some doubts whether, if the bill passes as it stands, this agreement may not be affected; and if our doubt cannot be got rid of we must allow the *locus standi*.

Pember: I will pledge myself that a clause to that effect shall be introduced.

Mr. RICKARDS: The undertaking of the promoters must be enforced by granting to the petitioners a *locus standi* against the clause complained of, which *locus standi* will cease when a saving clause is inserted.

Pember: It will be—*locus standi* granted against clause 25 of the bill until a clause is inserted saving the agreement of 1783.

The CHAIRMAN: Yes.

Agents for Bill, *Grahames & Wardlaw*.

Agent for Petitioners, *Edward Walmisley*.

DUBLIN UNITED TRAMWAYS COMPANY BILL.

Petition of RATEPAYERS AND INHABITANTS OF
THE CITY OF DUBLIN OR TOWNSHIPS OR PLACES
IN THE IMMEDIATE NEIGHBOURHOOD THEREOF.

2nd May, 1881.—(Before Mr. PEMBERTON, M.P.,
Chairman; Mr. HINDE-PALMER, M.P.; Mr.
PARKER, M.P.; Sir JOHN DUCKWORTH; Mr.
RICKARDS; and Mr. BONHAM-CARTER.)

*Tramway Companies, Amalgamation of—Rate-
payers and Traders, opposing—Traffic Faci-
lities, apprehended withdrawal of—Tram-
way Working, existing provisions as to—Board
of Trade, Appeal to, in case of Inefficient
Working—Tramway Act, 1870—Lease of
Tramway, to become absolute transfer
under Bill—Statutory Restriction on sale of
Tramway, repeal of.*

In Dublin there were three separate tramway undertakings, serving, under parliamentary authority, separate districts, and competing at only one point of their routes. With a view to greater economy in working, a limited company was formed to buy up the three undertakings, and two of these were transferred accordingly. In the case of the third tramway, the Act authorising it contained a restriction upon sale, though sanctioning a working agreement or lease. The tramway was in fact leased for thirty-one years to the new company, which now promoted a bill for its own re-incorporation, for the absolute transfer to itself of the third tramway, and for vesting in itself the property of the three undertakings. The bill was opposed by ratepayers and traders residing or having their places of business along the line of the tramway leased, who alleged that the bill would repeal an existing statutory restriction, that they might be deprived of traffic facilities now secured to them, and were entitled to appear as in the case of traders opposing railway amalgamations. The promoters contended that the amalgamation here was practically complete already, and that as to the proper working of the tramway in question, it was provided for, both in the special Act autho-

rising the line, and in the Tramways Act, 1870:

Held, that the status of the petitioners was not changed by the bill, and that they were not entitled to oppose it.

The *locus standi* of the petitioners was objected to, because (1 and 2) no land of theirs will be taken, no rights, privileges, or interests of theirs will be lessened, varied or affected, and their position will in no way be altered by the bill; (3 and 4) the petitioners are a very small section of the ratepayers and inhabitants and do not represent them; no meeting has been held to authorise such representation; (5) the petitioners are represented as to the city of Dublin by the corporation, and outside the city by the township commissioners; (6) the mere conjecture of the petitioners that, after the passing of the bill, the number of cars running on some of the lines of tramways in Dublin may be diminished cannot give them any right to be heard; (7) the Dublin tramways company and the North Dublin street tramways company have, under the powers conferred on those companies respectively by their Acts, sold their undertakings to the Dublin United tramways company, limited, with the approval of the Board of Trade, and the Dublin Central tramways company have, with the approval of the Board of Trade, under the powers of their Act, leased their undertaking to the same company, which is now in possession of and working the undertakings of the three companies. The amalgamation of the three companies is therefore already practically complete. The bill proposes to dissolve the limited company, and re-incorporate it under the name of the Dublin United tramways company, and to vest in such new company the property of the limited company, and expressly amalgamate with it the said three companies above mentioned. Such amalgamation is for the purposes of convenience and to prevent the necessity, in legal and other proceedings, of giving formal proof of the various steps by which the amalgamation has already been effected. No new power in any way affecting the petitioners is conferred on the new company by the bill. All the tramways of the said three companies are now under one control and management, the Dublin Central tramways company have ceased to have an independent existence, and the injurious results (if any) thereby caused to the petitioners, cannot in any way be increased or altered by the bill; (8) the Dublin South city markets company have no

interest in the matter and are not in any way affected by the bill, or if they in fact have any interest they ought to have presented a separate petition; (9) the petitioners set forth no ground entitling them to be heard according to practice.

O'Hara (for petitioners): This is a new case. It is the first opposed tramway amalgamation bill, and the question is whether the petitioners have a right to be heard against the proposed amalgamation of three existing tramway companies. The Dublin South City market company, one of the petitioners, are traders, and own a great part of the frontage in Great George-street, a street very near the centre of Dublin, and traversed by the existing tramway of the Dublin Central tramways company. The company was authorised by an Act of 1878, which, after incorporating the Tramways Act of 1870, contains this restriction:

"But nothing in the Tramways Act, 1870, as incorporated with this Act, shall empower the company to sell their undertaking to any person, persons, corporation, or company."

Before the company, therefore, can sell their undertaking, they must come to Parliament for powers to do so. No doubt this proviso in the Act of 1878 was inserted in the interest of people—amongst others, the market company—who supported the bill, to ensure that this line should always remain in independent hands.

Mr. RICKARDS: Was that clause inserted in consequence of the opposition of any of the petitioners?

J. D. Fitzgerald (for promoters): No; it was inserted by Lord Redesdale, and has been in all tramway bills since 1870.

O'Hara: It is of the greatest importance to people living along this line of tramway, to people frequenting the market, and to the Market company, that an efficient service should be maintained to and from the centre of Dublin. The two other companies have sold their undertakings to the Dublin United tramways company, who promote the bill. The Dublin Central tramways company have, under a clause in their Act, leased their undertaking to the same company, and since this temporary amalgamation the petitioners, as they allege, have suffered great inconvenience through imperfect accommodation. The special Act of the Central company authorises them to lease or enter into working agreements for the use of their tramway by other companies; but these working agreements are temporary. A lease implies a reversion in the leasing company, which therefore has an interest to see that the line is not worked so as to injuriously affect the traffic. Until these lines are actually vested in one company the promoters cannot do what we fear

they will do—starve the traffic on the line, which might accommodate us efficiently, and carry passengers round by other routes. We wish to be heard in order to procure a clause providing that the traffic shall be worked so as not to favour unduly other lines and neglect the Central line.

Fitzgerald: The Act of 1878 (sec. 7), provides for the due working of the Central company's tramway, and says that the working shall be subject to revision from time to time by the Board of Trade.

O'Hara: It would be a very difficult thing for persons residing along this line to go before the Board of Trade and make out a case, unless clauses were inserted in the Amalgamation Act saying how the line should be worked.

The *CHAIRMAN*: If all the tramways belong to one company, what interest will they have to favour one more than the other?

O'Hara: They might think that they could better utilise one line, and might to some extent withdraw accommodation from the other line. This, in fact, is what the petitioners allege has been done since the temporary amalgamation. Tramway managers know how to foster or obstruct traffic upon particular routes quite as well as railway managers. At present the companies to be amalgamated are competing companies between certain points.

Mr. RICKARDS: The ground upon which we give a *locus standi* to traders against amalgamation bills is that those traders have now the option of two lines under different control between the same points, whereas the bill is going to deprive them of such option.

O'Hara: That is our case. We now have the option of going by two companies; if one charges too much, or is less convenient, we can go by the other; and as they run nearly between the same points we have the advantage of competition, of which we are going to be deprived. (*London and North-Western, and Whitehaven, Cleator, & Egremont Bill*, 2 Clifford & Rickards, 34.) As to the objection that we are represented by the corporation of Dublin, the following cases are in point:—*South London Gas Bill*, where consumers were heard, although the Metropolitan board and the vestries petitioned (2 Clifford & Stephens, 220); and the *Birmingham Gas Bill* (1 Clifford & Rickards, 141).

The *CHAIRMAN*: Is there any case of railway amalgamation where the question of competition has not arisen, but there has been simply an allegation that the new company will not work the line so advantageously for the traders as the old company?

O'Hara referred to *Great Eastern Railway (General Powers) Bill* (2 Clifford & Stephens, 38).

Fitzgerald (in reply): The status of the petitioners is in no way altered by the bill. Up to last year there were in Dublin three independent tramway companies, serving different districts, there being at one point a certain amount of competition, and at one point only. Of those companies two had statutory powers to sell their undertakings, and did sell them to us. The third, the Central company, had no power to sell, but had power to make working agreements, or to lease, and they did accordingly lease their undertaking to us for 31 years. It was thought that a great saving would be effected in the working of the different tramways by placing them under one control, and that object has been effected, with the approval of the Board of Trade in each instance. The very thing of which the petitioners complain has therefore already come about. We possess the three tramways; there is united management, and no competition. The object of the bill is not, as the petitioners allege, to amalgamate the three lines, because the amalgamation is already complete; it is to dissolve the Dublin United tramways company, limited, turn it into a parliamentary company, formally vest in it all the property of the three companies, and give the Central company power to sell instead of lease. Practically the bill is one to regulate the internal affairs of the companies, and not for the purpose of amalgamation in the ordinary sense. Whether the bill passes or not, no change will take place in the existing relations of the three companies, or in the position of the petitioners respecting them.

Mr. RICKARDS: The difference as regards the petitioners is that, as things stand at present, after 31 years the lease may not be renewed, and then, to a certain extent, the competition may revive?

Fitzgerald: That is the only difference. The petitioners complain that if the bill passes they will have no security for the traffic facilities they now possess, and that we may discontinue the working of the whole or some part of the Central line. The answer is that not only will the bill leave untouched the status of the petitioners, but that by sec. 7 of the Dublin Central Tramways Act, which will be kept alive, the company are bound to "work and continue" their tramways after construction "so as to well and sufficiently accommodate the traffic thereon, and shall, in such working, use all reasonable endeavours to develop such traffic; and the manner of such working shall be subject to revision from time to time by the Board of Trade, which revision the said Board are hereby authorised to make." Thus, if the traffic is neglected, the petitioners can apply to the Board

of Trade; and under the General Act of 1870 (sec. 35), which this bill incorporates, if 20 ratepayers, or the road authority of the district, represent that the tramway is not properly worked, the Board of Trade may license other parties to work the tramway.

Mr. RICKARDS: The principal point seems to be that the existing lease may be converted into an absolute transfer.

Fitzgerald: On this point the case is governed by the decision in the *Llynvi and Ogmores Valley Bill* (1 Clifford & Rickards, 238).

The CHAIRMAN: We think the status of the petitioners is not altered by this amalgamation in any way.

Locus standi Disallowed.

Agents for Petitioners, *Sherwood & Co.*

Agents for Bill, *Cruse & Clay.*

DUDLEY GAS BILL.

Petition of THE CORPORATION OF DUDLEY AND CONSUMERS.

7th March, 1881.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE-PALMER, M.P.; Mr. PARKER, M.P.; Sir JOHN DUCKWORTH; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Gas Company's Bill for new Capital—Municipal Corporation and Consumers opposing—Municipal Corporations, Statutory Powers of, as to Lighting—Municipal Corporations Act, sec. 87—Municipal Corporations Amendment Act, 1857—Gas and Water Facilities Acts, 1870 and 1873—Gasworks Clauses Act, 1871—Borough Funds Act, 1872—Public Health Act, 1875—S. O. 188 A. Gas Companies (Additional Capital to be offered by Public Auction)—Gas Consumers, Representation of—Testing-place and Examiners for Gas—S. O., new, 134 A. (Local Authorities to have a Locus Standi against Gas and Water Bills.)

Against a bill promoted by a gas company at Dudley and confined principally to the raising of additional capital, the municipal corporation of Dudley joined with 600 consumers in a petition objecting to this increase of capital, as well as to certain minor provisions. Counsel for the petitioners, admitting that the previous decisions were adverse to the petitioners' *locus standi* as to capital, asked for a reconsidera-

Act empowers the local authority to appoint a competent person as examiner to test the gas. Section 30 provides that where no examiner is appointed, or where the testing of the gas is imperfectly attended to by the local authority, two justices, on the application of not less than five gas consumers, may appoint an examiner. Section 34 provides for proper access to the testing-place. Section 35 enacts that the company, on or before March 25th in each year, shall furnish the local authority with an annual statement of accounts. The Borough Funds Act, 1872 (35 & 36 Vict., c. 91), recognises (section 2) the right of a governing body to promote or oppose local bills, including, of course, gas bills, at the expense of the rates.

Richards, Q.C. (for promoters): The Borough Funds Act does not in the least affect the rules of Parliament relating to *locus standi*. If that Act has any bearing upon the question it shows the anxiety of Parliament to prevent corporations from squandering the public money in opposing and promoting bills, without ample security that in doing so they are representing the views of the general body of ratepayers.

Stephens: Though there is a limitation (section 2) on bills which local authorities may promote, there is no corresponding limitation with regard to bills they may oppose; and the proviso assumes that a corporation has a right to be heard against a bill, whether for raising capital or for other purposes.

Richards: The Act is really in restraint of the right of the local authority to appear in Parliament.

Stephens: No, it is an Act enabling corporations to do what they had not previously been able to do, as the preamble shows:—"Whereas it is expedient to extend the powers of governing bodies." Then the Public Health Act, 1875, authorises corporations to acquire gas undertakings by agreement. Before the decisions of the Referees on this point it always used to be regarded as an accepted principle that where a gas or water company came to Parliament for an increase of capital, the local authority had a right to be heard, inasmuch as it was to be presumed that the time would come when the local authority might desire to acquire the undertaking, and the effect of increasing the capital would be to enhance the price which the locality would ultimately have to pay. Consider also the effect of S. O. 188 A. which says:—

"In every bill by which an existing gas company is authorised to raise additional capital, provision shall be made for the offer of such capital by public auction or tender at the best price which can be obtained, unless the Committee on the bill shall report that such

provision ought not to be recognised, with the reasons on which their opinion is founded. In the case of every such bill it shall be competent to the Committee so to regulate the price of the gas to be charged to consumers that any reduction of an authorised standard price shall entitle the company to make a proportionate increase of the authorised dividend, and that any increase above the standard price shall involve a proportionate decrease of dividend."

It is, therefore, necessary that the consumers should be heard in order that these points may be raised.

Mr. RICKARDS: I am a member of the Committee on unopposed bills, and we always take that S. O. into consideration and decide upon the case as presented to us as to what the standard price ought to be.

The *CHAIRMAN*: I do not know whether the S. O. was not made to meet the case of an unopposed bill.

Mr. PARKER: Are you the only opponent in this case?

Stephens: Yes. It is suggested that by the uniform practice of Parliament we are shut out from a hearing. But in another committee-room to-day, the only opponents to a money bill were the local authorities, on whose opposition the Committee have refused to give the power sought by the bill, namely, to raise additional capital.

Mr. RICKARDS: The opponents may have been heard in that case because they were not objected to?

Stephens: Ought the right to a *locus standi* to depend upon the accident of whether the promoters object, or ought it not rather to depend upon the *bona fide* interest of opponents? Apart from our claim to be heard in this case against the increase of capital, we allege other grounds of *locus standi*. First we say that the promoters have not rendered their accounts in due legal form. For this default the company have been convicted, on our complaint, before two justices, and fined £50. A special case has been stated on this matter, and is now pending in the Queen's Bench Division. We apprehend that, notwithstanding this appeal, one of the enactments in the bill will enable the company to postpone the period for rendering proper accounts until January, 1882. If so, that is a change in our legal position. We seek also to be heard, among other matters, as to the 15-candle limit, as to the clause respecting the prescribed burner, and as to clause 22, i.e., "Within six months of the passing of this Act a testing-place shall be provided at the works of the company."

Richards, Q.C. (in reply): There is a string

of decisions to the effect that local authorities have no right to be heard where the bill is a mere money bill. (*British Gas Light Bill*, 2 Clifford & Rickards, 259, and decisions there cited; *Fylde Water Bill*, *infra*, 54.)

The CHAIRMAN (after deliberation): You need not address yourself to the question of principle; you need only address yourself to those other parts of the bill in respect of which a *locus standi* is claimed.

Richards: All the clauses referred to are restrictive and not clauses in favour of the company. We should be glad to be without them but they are imposed upon us. Objection has been taken to the clause providing that the Gasworks Clauses Act, 1871, shall from the 1st day of January, 1882, apply to the undertaking of the company. The case of *The Commercial Gas Company v. Scott** has decided that the Act of 1871 is incorporated with the Act of 1847. There is not the slightest disposition on our part to upset that decision, but the reason why these words are introduced into the bill is on account of the wording of the model bill in relation to the Acts of 1847 and 1871 as to undertakings specially authorised by the Act. Therefore, those words are inserted for the purpose of providing that the Act of 1871 shall apply as though the undertaking were authorised by the special Act. The law as it stands is that the Act of 1871 applies immediately. As to the 15-candle provision, it is for the benefit of the consumer.

Mr. RICKARDS: What do you say to clause 22, providing that the testing-place may be at the works of the company? If the testing system proposed by the bill is worse than that now existing, that would be a fair ground of objection by the corporation.

Richards: The Act of 1871 already provides for the testing. Clause 22 only defines the place.

Stephens: We say that the testing of the gas at one place instead of another may be a matter of importance to the consumers.

The CHAIRMAN (after deliberation): We have decided to adhere to our former decisions on the broad point. We have also decided in this particular case to give a *locus standi* limited to the testing-place clause.

Locus standi Allowed against clause 22.

Agents for Petitioners, *Dyson & Co.*

Agents for Bill, *Wyatt & Co.*

. The House of Commons subsequently passed the following new S. O. which stands

* L.R. 10, Q.B. 400.

134 A. in the S. O. for 1882, and will now rule the practice of the Court in cases like that above reported:—(Local Authorities to have a *locus standi* against Gas and Water Bills.)—"The Municipal or other Local Authority of any town or district, alleging in their petition that such town or district may be injuriously affected by the provisions of any Bill relating to the lighting or water supply thereof, or the raising of capital for any such purpose, shall be entitled to be heard against such Bill."

EDMONTON LOCAL BOARD BILL.

Petition of OWNERS, &c., AND RATEPAYERS IN THE DISTRICT OF THE EDMONTON LOCAL BOARD.

21st March, 1881.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. PARKER, M.P.; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Local Board, Severance of District—Owners and Ratepayers, complaining of—New Jurisdiction, creation of—Area of Rating, change in—Representation, of Owners and Ratepayers by Local Board—Owners and Ratepayers, Distinct Interest of—Representation, of General body, by petitioning Owners and Ratepayers—Compound Householders, status of, as petitioning Ratepayers.

A bill was promoted by certain owners and ratepayers in the western portion of the local board district of Edmonton to divide that district and create a new urban sanitary authority for the government of the western portion. The bill was opposed by other owners and ratepayers who would come under the new authority and who alleged that the proposed separation would lead to increased expenditure without any commensurate advantage in administration. The local board of Edmonton also appeared and their *locus standi* was not objected to; but the promoters contended that the petitioning owners and ratepayers (1) were represented by the local board; (2) included a number of compound householders who were not entitled to appear as ratepayers; and (3) were not a sufficient representation of the general body of owners and ratepayers in the proposed new district. In that district there were 3,490 owners and ratepayers, with a total rateable value

of about £49,000. The petition was signed by 124 owners, representing a rateable value of £5,628, and by 279 ratepayers, the total rateable value represented by the petitioners being £8,120. Of the 279 petitioners, 146 were compound householders; but it was in evidence that the names of the latter appeared on the rate books and that they were entitled to vote in the election of members of the local board:

Held, that (1) owing to the transfer of jurisdiction and the new area of taxation which would be introduced by the bill, the owners and ratepayers in the proposed new district had a distinct interest not necessarily represented by the local authority; (2) that the compound householders, being affected by the rates and their names appearing on the rate books, had a right to petition; and (3) that the petitioners sufficiently represented the general body of owners, &c., in the new district.

The *locus standi* of the petitioners was objected to, because (1) no lands, houses, or other property of the petitioners can be taken or injuriously affected by the bill; (2) the petition does not comply with the S. O. of Parliament, inasmuch as several of the signatures to the petition are not the proper signatures of the persons themselves; (3) many of the petitioners have signed by reasons of false representations made to them as to the effect of the petition and bill; (4) many of the petitioners are not owners or ratepayers in the district of the Edmonton local board or in the western portions of the parish of Edmonton; (5 and 6) such of the petitioners as claim to be heard as owners of property and as ratepayers respectively do not in number, rateable value, or amount of property owned by them represent the owners or ratepayers within the district of the Edmonton local board, or the parts of that district referred to as the western portions of the parish of Edmonton; (7 and 8) the petitioners do not petition on behalf of themselves and other owners and ratepayers of the district or the western portions of the parish, and the petition does not emanate from any public meeting; on the contrary, the only public meeting held in the western portions of the parish, since the deposit of the bill, was one called by two persons, one of them a petitioner against the bill, but which meeting passed a resolution approving the bill; (9) the petitioners have no

rights or interests distinct from the general body of owners and ratepayers, and are therefore represented by the Edmonton local board who have petitioned against the bill, and whose right to be heard is not objected to; (10) the petitioners do not represent the inhabitants of the district, and are not entitled to be heard against the bill in that character; (11) they are now liable to rates under the provisions of the Public Health Acts, and the bill does not give power to levy any rates other than those leviable under those Acts; (12) the promoters do not admit the allegations contained in paragraphs 4 to 8 (both inclusive) of the petition; (13 and 14) the promoters deny that the desire for separation emanates from a few residents at Southgate, or that their interest in the district is small, or that there are no *bond fide* grounds for the bill, or that a majority of the ratepayers are opposed to the bill; (15) four of the petitioners (*named*) are members of the local board, and in that capacity have already petitioned and are not entitled to be heard in a double capacity; (16) the petition does not allege any valid ground for a hearing according to practice.

O'Hara (for petitioners): The bill is not promoted by the local board but by ratepayers, and proposes to sever certain scheduled parts of the parish of Edmonton from the jurisdiction of the local board, and to create a separate urban sanitary authority. The petitioners are owners, ratepayers and occupiers within the proposed new district, and object to any interference with the existing local government at Edmonton. The present district of the local board, we say, is compact, and cannot be severed without inflicting great loss upon the ratepayers. The existence of two local authorities within so limited an area would lead to conflicts of jurisdiction, would double the expense of working, and would very materially increase the rates. We are not debarred from appearing by the fact that the local board have also petitioned, for apart from the opposition of the local board we have a distinct interest as ratepayers and owners of property who will be handed over to a new governing body, and will be placed within a new area of taxation. The local board might come to an agreement with the promoters; and then unless our *locus standi* is allowed, the ratepayers in the new district would not be heard. Upon any change of jurisdiction, and of the rating authority, landowners have an undoubted *locus standi*. The following cases bear upon the claims of the ratepayers:—*Belfast Harbour Bill* (2 Clifford & Stephens, 72); *Newry Borough Improvement Bill* (*Ib.* 183);

Ledgard: If the tenant is not allowed to pay he cannot be affected by this bill, and so the compounders should be struck out of the petition.

Mr. RICKARDS: The composition is not perpetual?

O'Hara: No.

The CHAIRMAN: We think the Petitioners are entitled to a *locus standi*.

Locus standi Allowed.

Agents for Petitioners, Wilkins, Blyth & Co.

Agents for Bill, Dyson & Co.

EGREMONT LOCAL BOARD BILL.

PETITION OF LORD LECONFIELD.

2nd March and 7th March, 1881.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. PARKER, M.P.; Mr. HINDE-PALMER, M.P.; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Local Board—Water Bill—Streams Impounded—Lord of a Manor—Mineral Rights of—Apart from Ownership of Soil—Washing Minerals—Right of Using Water for—Interference with—Pollution of Water—Waterworks Clauses Act, 184, Secs. 22 & 23—Mining Leases—Grants under—Site of Reservoir—Common Lands—Enclosure Act—Rights of Allottees, and Reservations under—Rights of Shooting and other Manorial Rights—Compulsory Taking of Rights Contrasted with possible Future Injury—Possible Use of Mineral Rights.

Practice—Insufficiency of Allegations—Adjournment for Evidence—Extent to which necessary—If clear, need not be Documentary.

Against a bill for the construction of waterworks promoted by a local board, a petition was presented by the Lord of the Manor of Egremont, comprising several extensive manors, in one of which the proposed interception of streams and construction of works was to be authorised. It was claimed for the petitioner in argument that as Lord of the Manor he was entitled to a *locus*, but the petition merely spoke of interference "with the exercise of his mineral rights and the development of his mineral property," and as this was held by the Court to be somewhat vague, while the notices of objection expressly denied that any mineral

property of his was affected, or that he was the owner of any of the streams proposed to be taken, an adjournment was applied for and granted to enable evidence to be produced by the petitioner. On a subsequent day accordingly evidence was given that upon other portions of the petitioner's property it was the practice to grant lessees of minerals the right to use the water of streams, &c., for the purpose of washing the minerals; whereas under sections 22 and 23 of the Waterworks Clauses Act, 1847, incorporated with the bill, this would in future be impossible in the case of the streams proposed to be impounded. It was admitted, however, that no minerals had ever been worked in the particular watershed, nor had it with certainty been established that any existed. The works themselves would be upon lands allotted under an Enclosure Act to persons other than the petitioner, merely reserving his mineral rights and rights of shooting:

Held, that the taking of the water might be regarded as an interference with the exercise of mineral rights, and that if the Lord of the Manor had the right to work the minerals, it was not necessary for him to say in his petition that he intended to do so.

The *locus standi* of Lord Leconfield was objected to, because (1) he is not the owner, lessee, or occupier of any lands, &c., taken; (2) he has no estate, right, or interest in the becks or streams proposed to be diverted, impounded or appropriated, nor does he so allege; (3) the statement that these streams, &c., run through and drain a district in which he is possessed of mineral property (which promoters do not admit) does not give him any right to be heard; (4) paragraphs 5 and 6 of the petition relate to another bill; (5) the general and vague allegations in the petition give him no right to be heard; (6) he has no sufficient interest according to practice.

Granville Somerset, Q.C. (for Lord Leconfield): The petition alleges that the streams and becks from which the water is to be abstracted for the supply of the works contemplated by the bill, "run through and drain a district in which your petitioner, as Lord of the Honour of Egremont and its dependant Manor of Cleator, is possessed of an ex-

It is not shown that we take any mines or minerals, or that we touch them. The suggestion is, that because streams may be impounded, this in some way would interfere with the exercise of Lord Leconfield's mineral rights. The question accordingly turns upon whether he possesses mineral rights at the point where the stream will be interfered with, and that has not been shown; although owner of a very wide extent of property it might well be that minerals might underlie one part of his manor, and not another.

Mr. RICKARDS: You propose to take the water of certain streams, and those streams Lord Leconfield alleges are necessary or useful to the working of his minerals?

Stephens: A Lord of a Manor cannot have any greater rights than an absolute owner of property; and he could hardly claim as such the right to take water and pollute it, and then make that power of pollution a ground of *locus standi*.

Mr. RICKARDS: If you are going to take water for your purposes from the owner of the water he has a *locus standi*.

Stephens: He does not say he is the owner of the water; and the only injury suggested is one that might arise in a certain event which has not happened.

The CHAIRMAN: We are told that there are mining leases, or at all events that he has power to grant them.

Stephens: The petition is exceedingly guarded on that point; if mines or minerals have been leased at or near this actual spot, the fact can of course be proved.

Somerset: We claim nothing in respect of mineral rights and of interest in these streams, but as Lord of the Manor. If we are to be tied down to putting into the petition all the rights appertaining to a Lord of a Manor, such documents will become of very great length.

Mr. RICKARDS: It is necessary that every petition should specify the injury apprehended. The only injury here alleged is the possible limitation of the exercise of mineral rights by interference with the water.

Mr. RICKARDS (to the witness): Are the waters referred to in the bill and petition within the manor of Lord Leconfield?

Witness: Some of them run through it. The reservoir is in the manor.

Mr. William James Clutton (agent to Lord Leconfield in the district) was next examined, and pointed out the site of the proposed works. At this point the soil belonged to the allottees under the Inclosure Act, subject to his lordship's rights. The practice with regard to Lord Leconfield's mining leases in the district,

where water was used for the purpose of washing lead, was to grant all the rights that the Lord of the Manor possessed.

Cross-examined: Could not say that these particular streams had been used for washing lead.

Somerset: There is to be a limitation on the power of Lord Leconfield to use the water. He may now let any portion of the minerals comprised within his manor, and may use the water for working the same. If the bill passes, he will be subject to a penalty under sections 22 and 23 of the Waterworks Clauses Act, 1847, for meddling with the water. The right of a Lord of a Manor to a *locus standi* against similar bills has been recognised. (*Hull Docks Bill*, 1878, 2 Clifford & Rickards, 109; *Bute Docks Bill*, on the Petition of Mr. Cartwright, Smethurst, 2nd. Ed., 95; *Bradford Water Bill*, Petition of Mr. Ferrand, 1 Clifford & Stephens, 41; *North Metropolitan Railway*, on the Petition of Sir Edward Colebrook, 2 Clifford and Stephens, 90; *Furness Railway*, on the Petition of Lord Lonsdale, 2 Clifford & Rickards, 158; *Pemberton Local Board*, on the Petition of Lord Gerard, 2 Clifford & Rickards, 212.) But irrespective of cases, Lord Leconfield having the right to use the water and the ownership of the minerals which he may either let or work, and being moreover lord of the manor, is surely entitled to a *locus standi*.

Stephens (in reply): Though the petitioners at their own request have been engaged since Friday in maturing their evidence they have not established that the bill will affect any of Lord Leconfield's rights in the district. The site of the reservoir was at first supposed to be upon his estate, or on common land, but it is now shown to be upon lands separately allotted to persons, other than Lord Leconfield, who only retains his mineral rights, if any, underneath.

Somerset: Besides the mineral rights the shooting is reserved.

Stephens: This case is distinguishable from all that have been cited. In every one of those something was compulsorily taken from the Lord of the Manor by the operation of the bill; it was not merely that something would be done from which injurious consequences might or might not follow; something was proposed directly inconsistent with the lord's rights.

Mr. RICKARDS: The petition says that it is proposed to appropriate certain streams which the Lord of the Manor alleges are useful for the purposes of his mineral rights?

Stephens: He does not allege that they are now useful, or that he has ever used them, or that he may ever require to use them; he only says

that in future he may be put to inconvenience in the exercise of his mineral rights. A Lord of a Manor has not necessarily a *locus standi* as such. (*Grand Junction Bill*, 2 Clifford & Rickards, 165.) Lord Leconfield is not shown to have done anything in this watershed. He does not pretend that he has a single mineral work there. The witnesses expressly say that the mining operations have gone on upon his property elsewhere. There is not a suggestion even that Lord Leconfield has put a spade into the ground for the purpose of testing whether there are any minerals in the district affected by the bill.

Mr. RICKARDS: His allegation is that he is Lord of the Manor, possessed of mineral property, and that the bill would interfere with the exercise of his mineral rights?

Stephens: We do not take his mineral property.

Mr. RICKARDS: But you interfere with the use of it by taking this water?

Stephens: He does not say that he has any present intention of working his minerals, or that he ever will.

The CHAIRMAN: If he has the right to work them it is not necessary for him to say he is going to work them.

Stephens: If he wished to use the streams we do not take the water away, for he is higher up the stream than we are.

Mr. PARKER: If he took the water, you would proceed against him under the Waterworks Clauses Act.

The CHAIRMAN: We are quite prepared to uphold the principle that the injury must be pointed out more or less specifically; the simple question is, has the injury been specifically alleged in this case?

Stephens: We say the petition is insufficient, and even if sufficient that the injury is so remote as not to entitle the petitioner to a *locus standi*.

[*The Referees deliberated.*]

The CHAIRMAN: We think, in this case, we must allow the *locus standi*, and that the petition does sufficiently point out what the injury complained of is.

Locus standi Allowed.

Agents for Petitioners, Jennings, White & Buckston.

Agents for Bill, Wyatt, Hoskins & Hooker.

FORTH BRIDGE RAILWAY (ABANDONMENT) BILL.

Petition of MESSRS. VICKERS, SONS & COMPANY.

14th March, 1881.—(*Before Mr. PEMBERTON, M.P., Chairman; Mr. PARKER, M.P.; Sir JOHN DUCKWORTH; and Mr. RICKARDS.*)

Railway Abandonment—Dissolution of Company—Unfulfilled Contract—Contractor—How far a Creditor—Saving Clause—Insufficiency of.

The bill provided for the abandonment of a railway and the dissolution of the company, "when all the debts, liabilities, and engagements of the company are paid, satisfied, and discharged." Another clause of the bill provided that "after the passing of the Act the company shall, except only as is by this Act otherwise expressly provided, be absolutely freed from all obligations with respect to the making and maintaining of the railway." The petitioners were a firm of manufacturers who had contracted to supply the company with steel for the purposes of their railway, but the time for delivery had not expired, and they had received notice from the company of their intention to abandon the contract. The petitioners complained that the provisions of the bill provided no means of recovering the expenses to which they had been put in procuring the steel contracted for; that they were not even in the position of creditors of the company; and inasmuch as the company had only been empowered to enter into the contract with them under the powers of their special Act, that according to decided cases they would have no legal remedy against them on the passing of the bill. They accordingly claimed a *locus standi* to obtain the insertion in the saving clause of an express provision for their protection:

Held, that in view of the ambiguity of the saving clause, and their peculiar position as parties to an unfulfilled contract, they were entitled to a *locus standi* limited to this purpose.

The *locus standi* of the petitioners was objected to, because (1 and 2) the allegations in

the petition are to the effect that the petitioners are creditors of the company, but it is not shown nor is it a fact that they have any interest affected by the bill distinct from the other creditors of the company; (3) as creditors of the company the petitioners have no *locus standi* to oppose the bill; (4) the bill contains no provision which can operate injuriously to the petitioners, who have no such interests in it as to entitle them to be heard..

Shiress Will (for petitioners): The bill is for the abandonment of the Forth bridge, and the dissolution of the company. In 1880 we entered into a contract for the supply to the promoters of steel for the construction of this bridge. We have now received notice from the company that they will not carry this contract into effect, and we are consequently heavy losers by the preparations we have made for carrying out the contract. That contract was made for the purposes of, and by virtue of the company's special Act of incorporation which authorised them to construct the Forth bridge, and the present bill, if passed, will, according to decided cases, relieve them of all contracts in connexion with their abandoned undertaking. They will not be legally liable for not carrying into effect any contract which the abandonment of the railway bridge and the repeal of their Act of incorporation will render impossible. (*Baily v. De Crespigny*, L.R. 4 Q.B., 180; *Thorn v. Corporation of London*, L.R. 9 Ex. 163.) Clause 7 of the bill provides that forthwith, after the passing of this Act, the company shall proceed to pay, satisfy, and discharge all their debts, liabilities, and engagements, and to distribute their surplus assets (if any) among the shareholders, and to wind-up the affairs of the company, but it is doubtful whether our contract would be held to come within the descriptive words of that clause, and, *contra*, clause 3 provides, "the company may and shall abandon the making of the railways, and on and after the passing of this Act the company shall, except only as is by this Act expressly provided, be absolutely freed from all obligations with respect to the making and maintaining of the railways." Our contract is an obligation with respect to the making of the railway, and we claim a special clause for our protection. We are not even creditors of the company as we have not yet delivered the steel.

The CHAIRMAN: If you brought an action in order to ascertain the amount of your damage you would become a creditor.

Shiress Will: As soon as the bill passed it would be *ultra vires* of the company to carry out their contract with us, that contract being

only incidental to their powers to construct, and in fact the company would no longer exist. We ask for a distinct enactment to preserve our rights under the contract. (*Dundee Police Bill, Petition of Dundee Harbour Trustees*, 2 Clifford & Stephens, 136.)

Clerk, Q.C. (for promoters): Clause 8 of the bill provides for the dissolution of the company only, "when all the debts, liabilities, and engagements of the company are paid, satisfied, and discharged, and the affairs of the company wound-up." That clause will cover our engagement with the petitioners. Our discharge of every obligation is a condition precedent to our being dissolved.

The CHAIRMAN: As there appears to be some doubt as to the construction of the clauses preserving the liabilities and obligations of the company, and how far the petitioners' case would be covered by those clauses, the Court *Allow* their *locus standi* against clause 7 for the purpose of inserting words to save their rights under their contract with the promoters.

Agents for Promoters, *Simson & Wakeford*.

Agents for Petitioners, *Sherwood & Co*.

FURNESS RAILWAY BILL.

Petition of THE ULVERSTON LOCAL BOARD.

9th March, 1881.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. PARKER, M.P.; Sir JOHN DUCKWORTH; and Mr. BONHAM-CARTER.)

Railway Abandonment—Substitution of new, for Authorised Line—Local Authority—S.O. 134—Statutory Agreement as to Tolls—Alleged Breach of, under Bill—Roads—Permissive Clause for Agreement as to—Power to supply Water by Railway Company—Competition with Local Board—Invasion of District of Supply.

Practice—Question of Construction of Act one for Committee—Insufficiency of Allegations of Petition.

The bill provided for the abandonment of a portion of line authorised by a previous Act, and the substitution of another portion; is also provided expressly for the transfer to the new portion of certain rights, the subject of an agreement to which the petitioners were not parties, but was silent as to an agreement come to with the petitioners, and embodied in another

Act, with regard to traffic to be carried upon the portion proposed to be abandoned. The petitioners claimed a *locus standi* to obtain the insertion of a clause in the bill specially saving their rights. It was, however, pointed out that the clause in the former Act in favour of the petitioners extended to traffic carried between certain termini by any part of the company's system, and that such traffic could be carried between the same points by a route not sought to be abandoned:

Held, that their rights under the former Act were not affected by the bill.

A doubt being suggested as to the construction of the bill when read with former Acts, the Court intimated that such a question would be properly reserved for a committee on the bill.

The petitioners as the road authority of the district also claimed a *locus standi* against a clause (33) which gave the promoters power to enter into agreements with the petitioners for the diversion or improvement of roads within their district:

Held that the clause being merely permissive did not prejudice the rights or jurisdiction of the petitioners.

A similar claim to a *locus standi* as the road authority was preferred by the petitioners against a clause (34) providing for the extinction of certain rights of way within their district, but the petition (as stated in the promoters' objections to *locus standi*) did not allege that any right of way, in which the petitioners were interested, would be affected, and the Court accordingly disallowed the *locus standi* of the petitioners on this point without calling upon the promoters to reply.

Clause 35 of the bill empowered the promoters to supply water from a canal, which was their own property, to mills, manufactories, and works adjacent thereto, which were in the district of the petitioners, who themselves undertook the water supply, and they claimed to be heard against the clause on the ground that it would create a competition between the promoters and themselves, and was an invasion of their district of supply:

Held, that they were entitled to a *locus standi* against the clause in question.

The *locus standi* of the petitioners was objected to, because (1) no property, right, or interest of the petitioners will be taken or affected in the construction of the railway or siding B. proposed to be authorised by clause 4 of the bill and referred to in paragraphs 2 and 8 of the petition, or by the abandonment as provided by clause 29 of the bill, of the railway or siding authorised by the Furness Railway Act, 1866; (2) the construction of the said railway or siding B. and the abandonment of the said existing railway or siding will not nor will any of the provisions of the bill evade or affect in any manner whatever section 10 of the Furness Railway Act, 1876; (3) clause 33 of the bill complained of by the petitioners is a mere permissive power to the promoters and the petitioners to enter into and carry into effect agreements for the purposes therein mentioned and can only be exercised if and when the petitioners think fit; (4) with regard to clause 34 of the bill it is not alleged in the petition, nor is it the fact that any rights of the petitioners are proposed to be extinguished or in any way affected, and the petitioners are only affected, if at all, by the proposed extinguishment of rights of way (if any) in the same manner as the general public; (5) with regard to clause 35 of the bill, the competition, if any, which could arise between the petitioners and the promoters thereunder would be inappreciable and not sufficient, according to the practice of Parliament, to entitle the petitioners to be heard against the bill. The clause expressly provides that the only water to be supplied thereunder is that which is not required for the purposes of the canal, and the water can only be supplied to "mills, manufactories, or works on adjacent or near to the canal," and which are not supplied by the petitioners; (6) no property, right, or interest of the petitioners will be taken or prejudicially affected under the powers of the bill, nor will the district of the petitioners or the inhabitants thereof be injuriously affected by any of the provisions thereof, and the petitioners have not, and their petition does not allege or show that they have any such interests in the objects of the bill as, according to the practice of Parliament, entitles them to be heard against it.

Tahourdin (for petitioners): The bill is intituled "a bill for conferring further powers on the Furness railway company, for the construction of works, the raising of money and otherwise in relation to their undertaking and for other purposes," and by clause 4 it

takes power to make "a railway or siding, four furlongs, two chains and four yards or thereabouts in length, wholly situate in the parish of Ulverston, commencing by a junction with the Bardsea branch railway of the company (authorised by the Furness Railway Act, 1876, and therein described as railway No. 4), and terminating at the basin of the Ulverston canal." And then it provides, "and the railways shall with respect to tolls, rates and charges, and for all other purposes whatsoever, be part of the undertaking of the company, and except as is by this Act otherwise expressly provided, the company may demand and take in respect of the railways, a like amount of tolls, fares, rates, and charges, as by the Furness Railway (Whitehaven Amalgamation) Act, 1866, the company are authorised to demand and take with respect to their other railways." The exception referred to in that clause is contained in clause 29. "When the railway or siding B. by this Act authorised is completed, and opened for public traffic, the company may, if and when they think fit, abandon and cease to use for public traffic, and remove the railway or siding authorised by the Act of 1866, and thirdly described in section 5 of that Act, and from and after such abandonment, the company shall be absolutely freed from all obligations with respect to the construction, maintenance, and working thereof, and the company may retain, appropriate, and use, for the purposes of their undertaking, the lands upon which the said railway or siding so abandoned has been constructed, or which are now used for the purposes thereof. From and after the completion and opening for public traffic of the said railway or siding (B.), section 25 of the Act of 1866, and the said heads of agreement shall be read and have effect as applying to the said railway or siding (B.), instead of the railway or siding authorised by that Act, and thirdly described in section 5 thereof. Provided always, that except as is by this section expressly provided, nothing in this Act contained shall repeal, alter, prejudice, or affect any of the provisions of the Act of 1866, or of the said heads of agreement; but such provisions shall, except as aforesaid, continue and remain in full force and effect." We object, in the first place, to these sections; we have nothing to say against the substitution of siding B. for the railway authorised by the Act of 1866, but we say that we, as representing the interests of the town and the traders of Ulverston, got a clause, viz., 10, inserted in the Furness Railway Act of 1876, for our and their protection, which the bill does not preserve. That clause enacted that "the company will at all times

hereafter convey and deliver goods and traffic of all kinds, except coal, between the Ulverston canal and the Ulverston railway station, at a rate not exceeding one shilling per ton, and coal at a rate not exceeding sixpence per ton, such rates to include canal dues, any such traffic carried beyond the said distances to be charged at the ordinary through rates, and will at all times maintain sufficient and proper sidings so as to enable goods to be loaded from and into vessels on the canal, and from and into the railway trucks." The provisions of clause 29 of the bill are an evasion of that clause, and are in breach of our rights and privileges. We are entitled to a *locus standi* on the question arising between us and the promoters, as to the construction of this bill read with the former Acts. The question of construction is a question which this Court will not determine. (*Devon and Somerset Railway Bill*, 1 Clifford & Stephens, 94; *Dundalk and Greenore Bill*, *Ib.* 107.)

The CHAIRMAN: If we saw there was a *bond fide* question of construction we would rather leave it to the Committee to decide.

Tahourdin: We say that the bill does not sufficiently save that protective clause of which we have had the benefit since 1876.

The CHAIRMAN: That is a clause for the benefit of the public generally.

Tahourdin: Yes, but we, as the representatives of the public interest of Ulverston, got that clause put into the Act of 1876. The promoters now bring in a bill which practically supersedes that clause altogether.

The CHAIRMAN: Do you claim to represent the public generally?

Tahourdin: We claim to represent the public interests of Ulverston as the local board. S. O. 134 gives a discretion to the Referees to admit the authority having the local management of any town whose inhabitants are injuriously affected by the bill to be heard. The local board represent the trading and other interests of the town, and this is a matter relating to the general interests of the town. The objections do not raise the point whether we represent the public or not.

Pembroke Stephens (for promoters): It is immaterial whom the petitioners represent. Section 10 of the Act of 1876 is not touched at all.

Tahourdin: Clause 10 of the Act of 1876 can only apply to railways which the company have made or which they may afterwards make, and cannot, of course, apply to abandoned lines, nor can it apply after it has been superseded by any other enactment. The effect of clause 4 of the bill is that the tolls of which we got the

benefit by section 10 of the Act of 1876 are superseded; the company are no longer bound to charge a rate not exceeding one shilling a ton, and we are thrown back upon the tolls of the Whitehaven Amalgamation Act of 1866. Although clause 29 saves section 25 of the Furness Act of 1866, and although it saves a certain agreement of 1866 entered into with the owners with respect to rates on the railway between certain points, it is perfectly silent as to clause 10 of the Furness Act of 1876. We say that our rights under section 10 of the Act of 1876 should be expressly saved.

The CHAIRMAN: There are two points to be considered. First, you say that section 10 of the Act of 1876 is not saved, and then there is this further point; supposing it is not saved, you are thrown back with regard to rates to the Whitehaven Amalgamation Act, 1866. You must show us, assuming clause 10 is interfered with or superseded by the bill, that the tolls authorised by the Whitehaven Amalgamation Act of 1866 are different from those leviable under section 10 of the Act of 1876, because if they are the same you will be thrown back upon the same tolls.

Tahourdin: Is not that rather a question for the Committee? I submit that we are entitled to go before the Committee on the first point alone.

The CHAIRMAN: You must show us that your rights are affected.

Tahourdin: Section 4 of the Act of 1876 enacts that the railway shall with respect to tolls, rates, and charges, and for all other purposes whatsoever, be part of the undertaking of the company, and the company may demand and take, in respect of the railways, a like amount of tolls, fares, rates, and charges as by the Furness (Whitehaven Amalgamation) Act, 1866, the company are authorised to demand and take with respect to their other railways. Then section 10 of that Act makes the exception in our favour, which would be unmeaning if the tolls were the same as those under the Whitehaven Amalgamation Act. Our next ground of *locus standi* is that clause 33 of the bill provides that "the company and the local board for the district of the town and hamlet of Ulverston, in the county of Lancaster, may from time to time enter into and carry into effect agreements and arrangements for or with respect to the alteration, diversion, and improvement by the said local board of portions of the public road leading from the Ulverston canal head to the North Lonsdale iron works, the acquisition and appropriation of lands for the purpose, the contribution of funds, and all incidental matters." We object to this clause of the bill as being very indefinite,

and submit that any powers of this kind should be defined by the bill itself and not left to arrangement. Then clause 34 provides "all rights of way (if any) in, through, over, and along the property of the company situate in the parish of Ulverston and bounded on the north-eastern side thereof by the Ulverston canal, shall be and are by this Act extinguished." We object to that clause because it does not properly define the rights of way which, or the property over which rights of way, are to be extinguished, and submit that we, as the road authority, are entitled to appear in respect of that matter. (*Mersey Docks and Harbour Board Bill, on the Petition of the Corporation of Liverpool, 2 Clifford & Stephens, 201; Preston Gas Bill, 2 Clifford & Rickards, 216.*)

The CHAIRMAN: The question is whether you have alleged that there are any rights of way, in which you are interested, which will be affected?

Tahourdin: I concede that there is no special allegation in the petition saying that any right of way in which we are interested is affected by the bill, but we say the bill "will most injuriously affect the rights and interests of your petitioners and the said inhabitants." Taking that allegation in connection with the statement that we are the local authority, and are charged with the sanitary regulations and the repairing of the roads, I submit that we allege all that is required in order to entitle us to be heard on that clause.

Our next objection is to the powers sought to be conferred by section 35 of the bill which we say are contrary to the practice of Parliament, and to public policy, inasmuch as they would empower the company to compete with us for the supply of water within our district, and it would be unjust to permit a company formed for the purpose of constructing railways to enter into competition with a local authority for the supply of water within the district of such authority. We have expended large sums of money and incurred large responsibilities in and about our water supply, and the powers sought by the bill most injuriously affect them. We allege that the creation of such a competition would be injurious to the trade of Ulverston and to us as the local authority, and would materially diminish our water revenue to the detriment of the public and the increase of the rates in our district. No necessity exists for an additional supply of water to our district; we are able and willing to supply the mills and places referred to in section 35 of the bill with water both good in quality and abundant in quantity; and we allege that the water derived from the

Ulverston canal is impure and unfit for the purposes contemplated by the bill. Further, the powers sought by the bill could not be exercised without seriously affecting the waterway of the said canal, and on all grounds it is most inexpedient that any such powers should be granted. Clause 35 of the bill empowers the promoters "upon such terms and for such considerations as they may think fit to supply to any mills, manufactories, or works on, adjacent or near to the Ulverston canal, water from that canal and the feeder thereto not required for the purposes of the canal, and to enter into and carry into effect agreements and arrangements with the owners, lessees, and occupiers of any such mills, manufactories, and works with reference to such supply."

The CHAIRMAN: Is the Ulverston canal the property of the railway company?

Tahourdin: Yes; the case of *Provisional Orders (Ireland) Confirmation (Holywood, &c.), on the Petition of the Corporation of Dublin* (2 Clifford & Rickards, 59) is a case in point.

Stephens (in reply): The provisions of section 10 of the Act of 1876 are not affected, as that section does not apply to a special railway, but to certain traffic. The rates named therein apply to traffic between certain points, not upon a certain piece of railway only, but upon any of the company's railways between those points. Whatever rights that section gave to the petitioners they will continue to have after the bill has passed, because a portion of our main line now ready to be opened communicates between the points named in that section and will carry the traffic therein provided for at the specified rates.

[Mr. Stileman, C.E., was here called and examined, and gave evidence to this effect, adding that the company would not abandon the portion of line as proposed by the bill, and objected to by the petitioners, until the new portion was opened for traffic.]

Stephens: With regard to clause 33 of the bill, the power therein given is only a permissive power.

The CHAIRMAN: The Court do not consider that the petitioners have established a *prima facie* claim to be heard on clauses 33 and 34, and do not require to hear any arguments contra.

Stephens: With regard to the petitioners' claim to be heard against clause 35 of the bill, which gives the company the right to supply mills and manufactories with water from their own canal, if the local board have power to give that supply, it has never been exercised.

The CHAIRMAN: The mills and manufactories are all within the petitioners' district, and they

have power to supply water for all available purposes.

Stephens: As a matter of fact we have been supplying these manufactories so that whatever competition could arise already exists, and they cannot be heard on the ground that existing competition will be rendered more effective. In any case it would be inappreciable.

The CHAIRMAN: The *locus standi* is *Disallowed* at all points except as against clause 35.

Agents for Promoters, Toogood & Ball.

Agents for Petitioners, Tahourdins & Hargreaves.

FYLDE WATER BILL.

Petition of THE CORPORATION OF BLACKPOOL.

2nd March, 1881.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE-PALMER, M.P.; Mr. PARKER, M.P.; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Water Company — Additional Capital — Local Authority — Apprehended Postponement in Reduction of Water Rates — Conditions of Supply not Affected — Past Legislation — Waterworks Clauses Act, 1847.

The bill was promoted by an existing water company for the purpose of raising additional capital, and the petitioners were a local authority within the district of supply who claimed to be heard in the interests of ratepayers, on the ground that the raising of further capital would postpone any reduction in the water rates, and that the promoters had not carried out the powers conferred upon them by their former Acts in such a manner as to entitle them to ask for further concessions from Parliament. It appeared, however, that the bill contained no provisions for altering either the terms or conditions of supply; and it was urged that the petitioners were not entitled to be heard to review the manner in which the promoters had carried out the powers conferred upon them by former Acts:

Held, that, in accordance with previous decisions, the petitioners were not entitled to be heard against a bill for raising additional capital. (But now see S. O. 134 A.)

provided that owners through whose property the canal was made might erect wharves, &c., on their own land adjoining the canal, and be permitted free access to the canal. The petitioners, in virtue of their premises adjoining, at one point, a wharf belonging to the promoters, and used by them for the purposes of the canal, and at another point being only separated from it by a servitude road, of the soil of which they were the owners in fee, complained that the individual rights and advantages which they enjoyed under the special enactment would be taken away by the discontinuance of the canal :

Held, that in consequence of the special advantages secured to them as adjoining owners by the Act of incorporation, the petitioners were entitled to be heard against the clauses of the bill which provided for the discontinuance of the canal and the construction of works.

The *locus standi* of the petitioners was objected to, because (1) no lands, &c., of theirs are taken or interfered with; (2) the contiguity of their land to the wharf or quay referred to in paragraph 4 of the petition does not confer upon them any right to the private use of that wharf or quay, and the petitioners are not entitled to be heard with respect to any interference with the railways of the Caledonian railway company referred to in that paragraph; (3) the promoters do not admit that the petitioners ever had the right referred to in paragraph 7 of the petition to require the promoters to erect the bridges therein referred to, but even if they ever had such right, the same has never been attempted to be enforced, and in consequence of the construction of the City Union railway on the north side of the canal, the bridges would, if erected, be of no use to the petitioners; (4) the petitioners do not, in fact, and have not for some time past made use of the canal as a means of carriage of the produce of their brickworks or other produce, and they are not entitled to be heard as traders or freighters; (5 and 6) if any injury is inflicted by the proposed abandonment of the canal and the construction of the railway upon the petitioners, it is not such an injury as entitles them to be heard according to practice, nor does the petition allege any other such injury.

Saunders, Q.C. (for petitioners): We are owners of property consisting of land and

buildings used for the purposes of our business (that of brick-making) adjoining and in part bounding the wharf or quay forming the termination of the Glasgow and Paisley Canal at Port Eglington. There is nothing in fact between our premises and the canal property used for canal purposes, and we have always had direct access across their wharf to the canal. The bill provides for the discontinuance of the canal, and the construction of a railway upon its site, and we claim to be heard against the clauses providing for these purposes. The discontinuance of the canal is contrary to the condition upon which the promoters' predecessors in ownership of the canal obtained power to construct it, that the canal should be kept open and navigable for persons, that is to say, traders like ourselves desirous of navigating it on the terms contained in their special Acts; but besides appearing as traders we have in addition a special statutory enactment in our favour as adjoining owners, and we claim to be heard under the terms of that enactment, and on account of the depreciation that will be caused in the value of our property. Section 74 of the Act for the construction of the canal (46 Geo. III., cap. 75) provides :

"The owner or owners of any lands or grounds through which the said canal, or feeders, or collateral cut shall be made, may build, construct, or use any wharves, quays, landing-places, cranes, weigh-beams or warehouses, in, or upon, his, her, or their respective own proper lands, grounds, or wastes adjoining, or near to the said canal, feeders or collateral cut, with necessary ways and roads to the same; and may land any goods or merchandize, coal, lime, or other things upon such wharves, &c., or upon the banks lying between the same and the said canal, &c., and may make and use proper and convenient places for boats and other vessels to lie and turn in and pass by each other."

The canal, though it does not go through our property, bounds it on one side, and we are the successors in title of the owner of the land on both sides, from whom the land was purchased for the construction of the canal.

The CHAIRMAN: Might not the argument be that the provision of the 46 Geo. III., cap. 75, was given in respect of damage by severance?

Saunders: Damage by severance is met by another provision. We have a further claim to be heard as adjoining owners, as part of our premises are separated from the canal only by a servitude road, of which we are owners in fee, although we have leased it to the promoters, reserving however a right of easement over it. With reference to our claim to be heard as adjoining owners, the following cases are in

point:—*Coombe Hill Canal Navigation Bill, on the Petition of Owners, &c.* (1 Clifford & Rickards, 215); *Bradford Canal Bill, on the Petition of the Undertakers of the Ayr and Calder Navigation* (2 Clifford & Stephens, 179).

Pope, Q.C. (for promoters): The petitioners cannot be heard as traders generally, and they have no individual rights which entitle them to be heard. The meaning of section 74 of 46 Geo. III., cap. 75, is that if landowners construct wharves adjoining the canal we shall not be at liberty to say it is a trespass to land things on the canal bank itself, that is, the actual bank which holds the canal.

The CHAIRMAN: The Court is of opinion that in consequence of the rights conferred upon adjoining owners by section 74 of the Act 46, Geo. III., cap. 75, the petitioners have special interests in the maintenance of the canal entitling them to a *locus standi* against the clauses of the bill (22 and 23) providing for its discontinuance, and against the construction of works clause (4).

Agents for Promoters, *Sherwood & Co.*

Agent for Petitioners, *Robertson.*

GREAT EASTERN, EAST NORFOLK, AND ELY AND NEWMARKET RAILWAY BILL.

Petition of THE LYNN AND FAKENHAM RAILWAY COMPANY.

3rd March, 1881.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. PARKER, M.P.; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Railway Amalgamation—Conditional Running Powers under Special Act between Petitioners and Amalgamating Company—Effect of Amalgamation upon—Railways Clauses Act, 1863, Part V.—Existing Working Agreement between Amalgamating Companies—Status of Petitioners, how far Affected.

A bill for the amalgamation of railway companies A. and B., was petitioned against by a third company, on the ground that it effected a transfer of mutual running powers now existing between the petitioning company and company B., to company A., which was a larger and more powerful company. These running powers were created by a clause in a former Act obtained by the petitioning company. It was urged by the petitioners that the exercise of

running powers over their line by the larger company A. would affect their traffic to a much greater extent than the exercise of running powers by the smaller company B. It appeared, however, that the exercise of running powers over the petitioners' line, by the smaller amalgamating company B., was only conditional; that they had been conferred in view of an existing working agreement under statute in perpetuity, by which company A. was actually working the line of company B., so that the mutual running powers could not be carried out without the consent of the working company; that the bill merely put an end to the nominal existence of company B., and would produce no practical effect upon the relative position of company A. to the petitioners:

Held, that the bill involved no such alteration in the *status* of the petitioners as to entitle them to be heard against it.

The *locus standi* of the petitioners was objected to, because (1) the petition does not allege that such competition will be created between the promoters and themselves as to entitle them to be heard; (2) the bill contains no provisions for taking or using any part of the lands, railway stations, or accommodations of the petitioners, or running engines, or carriages upon or across the same, or for granting other facilities affecting the petitioners; (3) the transfer to the Great Eastern railway company of the conditional running powers which the East Norfolk railway company now possess over the petitioners' railway, is not a matter as to which the petitioners are entitled to be heard; (4) the bill does not contain any provision affecting the petitioners, nor does the petition allege any such interest in the objects of the bill as entitles them to be heard.

Cripps (for petitioners): By section 49 of the Lynn and Fakenham Railway (Extensions) Act, 1880 (43 and 44 Vic., cap. 165), it is provided that "The East Norfolk railway company may run over and use with their engines and carriages of every description, and with their clerks, officers, and servants, that portion of the Lynn and Fakenham railway lying between the intersection of that line with the East Norfolk railway near Themelthorpe and Blakeney, together with the stations, watering-places, booking-offices, landing-places, sidings, works, and conveniences connected therewith, provided they permit the company to run over and use

their engines and carriages of every description, and with their clerks, officers, and servants, that portion of the East Norfolk railway lying between the intersections of that Lynn and Fakenham railway near Themelthorpe and Aylsham, together with the stations, watering-places, booking-offices, landing-places, sidings, works, and conveniences connected therewith." The object of the present bill is the amalgamation of the Great Eastern and East Norfolk companies, and by the incorporation of Part V. of the Railways Clauses Act, 1863, the effect of the amalgamation will be to transfer to the Great Eastern company the powers conferred upon the Lynn and Fakenham company under section 49 of their Act. The effect upon our traffic of the Great Eastern company exercising running powers over portion of our line would be very different to the exercise of similar powers by a small company like the East Norfolk company.

Pember, Q.C. (for promoters) : The 49th section referred to was inserted in the Lynn and Fakenham Act in committee after we had retired, and we are not in any way parties to it. As a matter of fact the bill will not alter the *status* of the petitioners. The agreement contained in that clause is only conditional, not absolute. The East Norfolk railway company has from the beginning only existed in name. It was created by Great Eastern capital and has been entirely worked by the Great Eastern company, the power to make such working agreement having been given by the original Act authorising its construction, and in 1874 the two companies obtained an Act for working in perpetuity. The 49th section of the Act of 1880 could not now be carried into effect without the consent of the working, *i.e.*, the Great Eastern company, and therefore in giving that section to the East Norfolk, in view of the working agreement clause in the Act, the petitioners were in reality and with full knowledge giving it to the Great Eastern company. The mere fact of the bill putting an end to the nominal existence of the East Norfolk company does not give rise to a new state of things, or create any closer monopoly by the Great Eastern company, or greater competition with the petitioners than already practically exists.

The CHAIRMAN: The claim of the petitioners to be heard rests upon the construction and effect to be given to clause 49 of the Lynn and Fakenham Act, 1880. Having regard to the circumstances of the case, the Court *Disallow* the *locus standi* of the Petitioners.

Agent for Promoters, *Rees*.

Agents for Petitioners, *Dyson & Co.*

GREAT NORTH OF SCOTLAND RAILWAY BILL.

Petition of THE HIGHLAND RAILWAY COMPANY.

28th March, 1881.—(*Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE-PALMER, M.P.; Mr. PARKER, M.P.; Sir JOHN DUCKWORTH; Mr. RICKARDS; and Mr. BONHAM-CARTER.*)

Railways Amalgamation—Third Company—Interchange of Traffic—Disuse of Branch Line and Junction by Amalgamating Company—Claim of Petitioners to be heard against—Past Legislation—Res judicata—Obligations of Amalgamating Companies under Part V. of Railway Clauses Consolidation (Scotland) Act, 1845.

The bill, *inter alia*, confirmed an agreement for the amalgamation of two railway companies. With one of these the petitioning company formed a junction at a station common to both railways, and claimed to be heard against the amalgamation authorised by the bill on the ground that the amalgamating company had abandoned the use of the junction in question and the portion of railway leading to it. The formation of the junction had been carried out by the petitioners and the amalgamating company under the powers of their Special Acts, and its object was to facilitate interchange of traffic. The petitioners claimed to be heard to enforce the objects of the junction as a condition precedent to amalgamation. It was shown on behalf of the promoters, however, that the amalgamation had been already authorised by a previous Act of Parliament; that the bill merely gave a formal recognition to an agreement for amalgamation previously sanctioned by an Act of 1866, and of complete validity without the bill; and further that the bill itself by incorporating Part V. of the Railways Clauses Consolidation (Scotland) Act, 1845, left intact any remedy the petitioners might have previously had against the amalgamating company:

Held, that the petitioners were not entitled to a *locus standi* against the bill.

The *locus standi* of the petitioners was objected to, because (1) their petition refers to the abandonment or disuse of a railway between Rothes and Orton, as being injurious to them, but the bill seeks no sanction or authority for such abandonment or disuse, and in no way alters their position; (2) the petitioners by removing their own rails have disconnected the portion of railway between Orton and Rothes from the railway from Nairn to Keith, referred to in the petition, and if what has been done by the promoters be (as alleged by the petitioners but denied by the promoters) illegal, the remedy of the petitioners remains unaffected by the bill; (3) the transfer of the Morayshire railway to the Great North company referred to by the petitioners has been completed in accordance with powers contained in the Great North of Scotland Railway Act, 1866, by which it was authorised. The petitioners do not show in what way the transfer will be injurious to them. If it be injurious (which the promoters deny) this results from the Act of 1866, and not from the bill; (4) the promoters deny that the allegations of paragraph 6 are in any way material to the question of *locus standi*. If the petitioners had any valid claim against the promoters in respect of the matters referred to in that paragraph they would have a remedy at law, but they have no such claim. The Morayshire company paid to the petitioners, in respect of the works mentioned in that paragraph, a sum determined by arbitration; (5) the object of the petition is disclosed in paragraph 10, viz., to get power to carry the traffic mentioned over their own line by a long and circuitous route instead of its being carried by the promoters over the shorter route of the Morayshire railway. This confers no right to be heard; (6) the petition discloses no ground for a hearing according to practice.

Pember, Q.C. (for petitioners): One of the objects of the bill is the amalgamation of the Morayshire railway with the Great North of Scotland railway. The Morayshire railway has a station at a place called Orton, which is an important junction, and to that junction we have access by our railway. Clause 32 of the bill confirms an agreement between the two companies for a transfer of the Morayshire railway undertaking to the Great North of Scotland company. The junction at Orton between our railway and that of the Morayshire has been sanctioned by Parliament, both by our Special Acts and their own, as also the appointment of a joint committee and other matters in connection therewith, and we have expended large sums of money upon effecting the junction, and building a station common to both companies. The line

connecting Orton with the rest of the Morayshire railway system was in substitution for a line to Orton originally projected by the Great North of Scotland company, so that the Great North company have a double interest in it, and it is of the utmost importance to us that it should be properly worked. As matters now stand, however, the Morayshire company has entirely failed to carry out the objects for which Parliament sanctioned the making of the junction at Orton, and if the bill passes they will be relieved from all further responsibility in the matter. In 1866 the Great North company commenced working the Morayshire railway under the powers of an Act obtained in that year, and since that day the Great North company has entirely ceased to work or keep open the railway from Rothes into Orton junction, although it had been specially approved by Parliament, and no sanction has been obtained to abandon it. Such abandonment and disuse is in entire violation of Section 101 of the Railways Clauses Consolidation (Scotland) Act, 1845, and now that the companies come to Parliament to ratify their consolidation we claim to be heard to ensure the carrying out of our arrangements with the Morayshire company as to the joint use and working of the Orton junction and the portion of railway connected with it.

Mr. RICKARDS: You complain that the Morayshire company have ceased to run trains on this branch, but is it not the fact that you have taken your own rails up?

Pember: Yes; but only when we were driven to it from the Great North company having entirely disused Orton junction and station. Although the promoters obtained power under the Great North of Scotland Railway Act, 1866, to effect a transfer of the Morayshire company's undertaking to themselves, they have elected to do so on a fresh basis as it were by the present bill. We claim to go before a Committee to ask that this amalgamation should not be sanctioned in the interest of the public as well as ourselves, unless subject to the condition that the Great North company shall run their trains on the said portion of railway between Rothes and Orton, and interchange traffic with us at the latter station.

Pope, Q.C. (for promoters): The bill incorporates Part V. of the Railways' Clauses Act relating to amalgamation, and therefore any remedy which, before the passing of the bill, the petitioners had against the Morayshire company would survive and be available against the Great North of Scotland company. The petitioners cannot claim to represent the public in any sense. There is nothing in the bill to authorise the closing of the branch, and with

regard to the amalgamation that is *res judicata* having been sanctioned *in toto* by the Great North of Scotland Railway Act, 1866. There could be no practical injury to the petitioners, even if the bill authorised the disuse of the Orton branch, as it has been disused, and the points of junction between the petitioners' and the Morayshire line have been taken out for the last sixteen years. The bill only formally recognises the powers of amalgamation already authorised by the Act of 1866. That Act provided "that the company" (i.e., the Great North company) "may accept a lease or a transfer of the undertaking of the Morayshire company, and may enter into and carry into effect agreements for the amalgamation of the undertaking of the Morayshire company," and by section 50 of the Act of 1866 it is provided "that upon an agreement to that effect between the Morayshire company and the Great North of Scotland company, the Morayshire company itself shall be dissolved." We have already come to such an agreement, and only confirm it by the bill for convenience sake (the bill being an omnibus bill), although it is not necessary to do so. The confirming clause really is no more than a recital in the bill.

The CHAIRMAN: The *locus standi* of the Petitioners must be *Disallowed*.

Agents for Promoters, *Dyson & Co.*

Agents for Petitioners, *Martin & Leslie.*

GREENWICH DOCK AND RAILWAY BILL.

Petitions of (1) ALFRED DAVID LEWIS, SAMUEL HYAM, AND THE BIPHOSPHATE GUANO COMPANY, LIMITED; (2) ROBERT TAYLOR; (3) J. M. WEGUELIN AND J. THOMPSON, 'T. BONAR AND COMPANY.

24th March, 1881.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. PARKER, M.P.; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Dock Works, Access to Premises interfered with by—Site on River made into Island by—Roads, diversion of—Mainland, access to by Swing-Bridge instead of Existing Road—Road, taken for Docks—Road, substituted, Complaint of as Inconvenient—Representation, of Owners, &c., by Local Authorities in respect of Roads—Owners, &c., Injured by Diversion of Road.

A bill proposed for dock purposes to cut from the mainland an extensive piece of ground

abutting on the Thames, and to divert a public road leading into this piece of ground, and used by various owners, &c., of business, and other premises there. Three petitions were presented by certain of these owners, all complaining of the inconvenience and injury they would sustain by the substitution of a fixed or swing bridge for the existing road. It was further alleged and admitted that the bill did not compel the making of a substituted road, and did not specify the new communication which would be made with the mainland. The promoters objected that the petitioners had no distinct interest from that of other owners and occupiers upon what would become an island under the bill, and that the whole class were represented by the Metropolitan board and the district board of works, both of which bodies had petitioned, their *locus standi* being admitted:

Held, that interference with the access to business and other premises, such as that which would occur under the bill, constituted a special injury and created a distinct interest entitling the petitioners to appear apart from the local authority.

The *locus standi* of the three sets of petitioners was objected to substantially on the same grounds, because (1 and 2) no property of theirs will be taken, interfered with, or affected; (3) they allege that the proposed dock and works are intended to be constructed upon roads constituting the petitioners' means of access from their lands and premises to the mainland, and that it is intended to substitute another means of access, but this does not confer upon them any right to be heard. Parliament has in General Acts afforded them all the protection to which they may be entitled; (4) as regards interference with roads and streets, the petitioners are represented by the Metropolitan Board of works and the Greenwich district board of works, or by one of those bodies, both of whom have petitioned, and their *locus standi* is not objected to; (5) they allege no ground on which they are entitled to be heard according to practice.

O'Hara: (for Alfred D. Lewis, S. Hyam, and the Biphosphate Guano company, limited): This is a bill for enabling the Greenwich dock and railway company, to establish a dock. The promoters propose to cut away a corner

298). Whether the road is absolutely stopped up, or whether under the provisions of the bill a substituted road is constructed, we have a clear ground of *locus standi*, as we shall be or may be restricted in the use and enjoyment of our premises; and the proposals of the bill are in such an indefinite shape that, unless we are before the Committee to see in what shape the promoters themselves interpret their proposals, we cannot tell what will be done.

Jordan (Parliamentary agent, for Robert Taylor): Mr. Taylor's case is the same in substance as that of the other petitioners. He has 14 acres of land upon which there are 32 houses already built, and he is under obligations to erect 300 more. The houses are principally occupied by the labouring classes. In the absence of all information on the plans we may assume that the bridge over the western entrance would have to be a swing-bridge, liable to be opened at all times of the day and night to suit the tides for the passage of ships and boats to and from the river and the docks. Such a bridge would cause a serious obstruction to all descriptions of traffic above and below the dock, so that all the property cut off by the dock would be greatly depreciated in value, Mr. Taylor's among the rest. It would cause so much inconvenience and loss of time to his tenants, who nearly all belong to the working classes, that they would leave his house and go to others where the delay might be avoided. His houses would thus be unoccupied, and not only his present property but his future prospects of profit from further buildings would be entirely destroyed.

Worsley (in reply): The point is that we shall by the bill stop up a public road which is the only access to the petitioners' premises. We do not take any private road or any land of any of the petitioners. We must stop up the public road, and we must divert that road, and I admit there is nothing in the bill compelling us to give a substituted road. The Metropolitan Board of works and the local authority, the Greenwich district board, have both petitioned against the bill, amongst other points, upon the very ground that we take power to stop up this public road, and my point is that the petitioners are represented by these public bodies. No doubt the Referees have held in many cases that the ordinary doctrine of representation of individuals by public authorities is not to prevail where the petitioners show that they have a special interest apart from the interests represented by the public authority; but they must specify in their petition, and support by evidence to some extent, that they will be specially damaged. That proposition is borne out even by the cases cited.

The CHAIRMAN: Did the road authority appear in the cases that have been quoted?

O'Hara: In the cases I cited they did.

Stephens: In many of the cases undoubtedly they did.

Worsley: The petitioners in those cases alleged special circumstances in their particular cases. Here you find no such statement. It is true their access is cut off, but they do not allege that they will be in any different position from anybody else on the land that will be turned into an island. They do not allege any special circumstances such as entitle them to be heard apart from the local authority.

Mr. RICKARDS: The cutting off of their only access to the mainland is surely a special damage?

Worsley: But it is a damage which they suffer in common with the rest of the people on the island.

The CHAIRMAN: Are there any other persons on this land having works of a similar kind?

Worsley: The place is covered with them; there are dozens of them. The petitioners do not say "we shall be damaged more than the rest of the people whose access with the mainland will be cut off." They do not say "it is peculiarly necessary that we should have this direct road instead of a somewhat circuitous one that would be made." In an ordinary case, where a road is stopped up, which must of necessity cut off the access of some persons who use it, those persons are not entitled to a *locus standi* apart from the local board.

Mr. RICKARDS: This is more than the case of a person using a thoroughfare complaining that the road will be stopped up. These people say that in the carrying on of their business they want water access and road access as well, and they say that they will lose their land access, and their business will be thereby greatly prejudiced.

Worsley: I do not find that allegation.

Mr. RICKARDS: There is something equivalent to it in the petitions.

Worsley: The petitioners say their business will be obstructed, but in the other cases which have been cited it was alleged that there was something peculiar in the nature of the petitioners' business, the carrying on of which would be interfered with by the stopping up of the access. If these petitioners are to be admitted on these allegations, everybody in the island might be.

Mr. RICKARDS: Everyone carrying on a business which would be obstructed, no doubt would have a *locus standi*. If there were six people so situated, we should give a *locus standi* to six instead of three.

assented to the undertaking proposed by the bill.

The *locus standi* of petitioners (3, 4, 5, 6, and 7), was objected to on similar grounds, and also because their petitions alleged no special injury to their property such as might entitle them to a hearing under exceptional circumstances; because some of them complained of interference by the proposed railway with public roads, not being themselves the road authority; and in the case of (6) owners, &c., of property at Surbiton, and residents in the neighbourhood, because their petition was directed to showing that a competing scheme proposed by the London and South-Western railway company would be more advantageous to their neighbourhood, but did not allege any injury from the railway proposed by the bill, and this was no ground for a hearing according to practice.

Saunders, Q.C. (for promoters): We admit of course the *locus standi* of such of the petitioners as are owners, lessees, or occupiers within the limits of deviation.

Clerk, Q.C. (for all the petitioners): To take petition (2) first, the promoters object that some of the petitioners have signed another petition, and that they are not entitled to be heard upon both petitions. It is a well-established principle that the fact of a petitioner having signed another petition is no bar to his being heard upon his first petition. A petitioner after having presented one petition may have other facts brought to his knowledge which he may wish to present in another petition.

Mr. RICKARDS: He may petition with two separate classes of co-petitioners.

Clerk: The next objection is "That the said D. L. Hatch, G. W. Loxley, James Burgess, William Sheath, and George Sheath have respectively, by writing under their hands, assented to the undertaking proposed to be authorised by the bill." When a scheme is first brought to a man's notice he may approve of it and give his assent to it, but that does not estop him upon further consideration from subsequently opposing it.

Mr. RICKARDS: It might be a point to be urged against the petition before the Committee on the bill, but it is not an objection that goes to his *locus standi*.

Clerk: Then the only point for discussion is whether a large body of inhabitants, varying in number in the different petitions, have a right to be heard to support one scheme in preference to another. Taking first the petition (2): It alleges "That by the bill it is proposed to incorporate a company to be called the Guildford, Kingston, and London railway com-

pany." Then follows a recital of capital to be raised "for the purpose of making and maintaining the several railways described in the bill, which would form a continuous line of railway between the Metropolitan district railway at Fulham and the London and South-Western railway at Guildford with three branches therefrom, &c. That some of your petitioners are owners, &c., of lands situate on or near the line of the proposed new railway, or which will be injuriously affected by the making thereof, and others of your petitioners are inhabitants of the district in and through which the railways are proposed to be made, and which will be injuriously affected thereby. That such of your petitioners as are such owners, &c., object to the taking and severing of their lands and properties for the objects of the said bill, and all your petitioners, whether owners, &c., or inhabitants of the said district, object thereto, on behalf of themselves severally and of the said district, because the said proposed new railways are unnecessary and inexpedient in the public interest, and especially will, if sanctioned by Parliament, injuriously affect the said district by interfering with and preventing the making of other railways in the district, which would be less injurious to your petitioners, the said owners, lessees, and occupiers, and which other railways would better accomplish the objects of the promoters of the pending bill." Then it sets out the competing scheme of the London and South-Western company, and then the petition goes on to say that "The last-mentioned additional railways will better accommodate the district, because they are better designed to do it in the particular course selected for them, they will be constructed for far less money, the necessary funds are certain to be forthcoming, and there will be far better accommodation of trains for passengers, and also for goods, if the working of such new railways as may be authorised in the district is conducted by the London and South-Western railway company." The other petitions, with the exception of that of owners of property at Surbiton, contain practically the same allegations. Inhabitants of a district alleged to be injuriously affected are in at least as good a position as a municipality under S. O. 134. In certain cases they have been heard in preference to a municipality. (*South-Eastern and London, Brighton and South Coast Amalgamation Bill*, 1 Clifford & Stephens, 149.) In that case, 650 inhabitants out of a population of 75,000 were heard. In the *Pontypool Gas, &c., Bill* (1 Clifford & Rickards, 51), the proportion of petitioners to the population was also smaller than in the case of the present petitioners.

Mr. RICKARDS: Without going into these

figures, is not the question for us to decide, whether, there being no allegation in the petition of any special or distinct injury to the individual petitioners, except such as are owners, lessees, or occupiers, the others are not simply proposing as members of the public to give an opinion as to what sort of railway accommodation would best suit the district? The petitioners only say that the making of this railway would be comparatively injurious to them; they do not venture to say that it would be positively injurious. There is no interference with their existing *status*. It simply comes to this, that if this bill is rejected, they may perhaps obtain more advantageous railway accommodation.

Clerk: In cases of amalgamation, inhabitants are allowed to be heard to say that they are better served by two railways than by one.

Mr. RICKARDS: In that case they are complaining that the bill deprives them of an existing advantage, competition between railways. Here they do not say the bill will injure them in itself. The competing scheme will be taken before the Committee with the present bill, and the petitioners can deposit a petition or be called to give evidence in its favour. Taking the present bill alone, they could not allege that they are injuriously affected by it.

Clerk: The Surbiton petition (6) stands upon a different footing. The petitioners allege that the place will be injuriously affected physically. They allege that the railway is laid out with entire disregard of the comfort and convenience of the residents on Surbiton Hill, and unnecessarily interferes with valuable house property there; that beyond the inconvenience and damage inseparable from the construction of the railways, and the consequent alteration of existing roads, it is proposed to inflict additional injury by the construction of a new road over the main line of the London and South-Western company, and it is difficult to conceive what public purposes can be served thereby; and that so far as Surbiton Hill and the immediate neighbourhood are concerned, no advantage will be secured by the proposed new railway.

Saunders, Q.C. (for promoters): With regard to the petitioners generally, those who are not owners allege no tangible injury to their district, and cannot be heard in accordance with decided cases. (*Cobham Railway Bill*, 2 Clifford & Stephens, 57; *Grand Junction Canal Bill*, 2 Clifford & Rickards, 165.) Taking the Surbiton petition separately, as to the allegation of any interference with roads, that is a matter for the road authority, who petitions in favour of the bill. As regards the alleged "wanton destruction of property," the

owners of property will be heard as to that. There is no allegation in the petition that Surbiton will be injuriously affected by the bill so as to bring the petitioners within S. O. 184. In the case of these petitioners, not even those who are owners, lessees and occupiers are entitled to a *locus standi*, inasmuch as there is no allegation in the petition that they are owners, &c., of property proposed to be taken or affected by the bill. Although the petition is headed "The humble petition of owners of property at Surbiton," there is no statement that the bill affects such property, and it is therefore only a description of their *status*.

The CHAIRMAN: The *locus standi* of all the Surbiton Petitioners is *Disallowed*. The *locus standi* of all the other Petitioners is *Disallowed* with the exception of those who are Owners, Lessees and Occupiers within the limits of deviation.

A list of the Petitioners, whose *locus standi* was to be *Allowed*, was afterwards agreed to by the agents in accordance with the above decision, and approved by the Court.

Agents for Promoters, *Sherwood & Co.*

Agents for Petitioners, *Bircham & Co.*

HOYLAKE AND BIRKENHEAD RAIL AND TRAMWAY BILL.

Petition of (1) JOHN BEWLEY.

23rd February, 1881.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. PARKER, M.P.; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Railway—Landowner—Intended Conversion of Residential Property into Business Premises—Interference with River Frontage—Depreciation in value of Property—Prospective Injury, how far considered by Court—Practice.

A surviving executor and trustee under a will petitioned as a landowner against a bill authorising the construction of a railway, which would interfere with the existing access to a navigable river from the property which he represented. The property consisted of a dwelling-house and gardens, but the petition alleged that it was intended to sell it for commercial purposes, *e.g.*, a dock or iron foundry, for which its extended river frontage rendered it peculiarly valuable. It was argued that the petitioner

could not be heard upon a question of prospective injury, but the Court held that it was competent for them, looking at the allegations of the petition, to consider how far the character of the premises justified the apprehended depreciation of value from the construction of the proposed railway, and the *locus standi* of the petitioner was therefore allowed.

The *locus standi* of the petitioner was objected to, because (1) the petition does not allege that any land, house, or property of the petitioner will be taken under the powers of the bill; (2) the only ground on which the petitioner claims to be heard against the bill is that certain lands of his near the proposed works will, or may be, injuriously affected by their construction, but such allegation, if it were true (which the promoters do not admit) affords no ground of *locus standi*, and (3) the petitioner has no such interest in the objects and provisions of the bill as entitles him to be heard according to practice.

Potter, Q.C. (for petitioner): The petitioner is the surviving executor and trustee of the will of John Bewley, and as such the owner in fee in possession of an estate consisting of a messuage and premises and garden called "The Slopes," situate in (Breck-road) Wallasey, in the county of Chester. The estate abuts upon the west side of Wallasey Pool, with a frontage of 117 yards. Although the estate is at present used for residential purposes, owing to the increasing demand for docks and manufacturing and business premises it is intended to sell it for commercial purposes, and it is on account of its extended frontage to Wallasey Pool particularly well adapted to be used for a ship-building yard or iron foundry or other business requiring convenient water carriage. At present ships of considerable size and tonnage are able to pass up the river Mersey to and anchor alongside of the estate, and to return down to and into the river again. The petitioner alleges that his rights as a riparian owner in respect of this estate will be seriously and prejudicially affected by the construction of railway No. 1, as authorized by the bill. That railway has been laid out so as to cross Wallasey Pool in a line nearly parallel to the present Wallasey Bridge-road, and to touch the Cheshire line of Wallasey Pool at a point only about ten yards distant from our estate. We allege that the effect of this if sanctioned would be not only to render useless for the aforesaid purposes the petitioner's estate, but also to cut off

the access by water from it to the river Mersey. We might at least be allowed to go before the Committee to claim some protection for our present access to the Mersey, and to claim compensation for the deterioration in the value of our property, even for residential purposes, and *a fortiori* in its selling value for the purposes for which we intend parting with it.

O'Hara (for promoters): The petition does not set forth any injury to the estate in its existing condition. It is the petition of an owner of a residential estate, who claims to be heard because damage may be done to his estate, when docks and buildings for commercial purposes shall have been hereafter constructed upon it. The injury complained of is purely prospective, and does not according to practice entitle the petitioner to be heard. (*Metropolitan District Railway Bill*, *Infra*, p. 86; *North British (No. 2) Bill*, *Petition of Commissioners of Police, &c.*, 2 Clifford & Rickards, 54; and the *Midland Railway Bill*, 2 Clifford & Stephens, 103.) Between the last case and that of the petitioner, the only difference is that there was interference with the user of a highway, whereas in the present case it is the user of a water way, and it was held in the case of *Metropolitan Board of Works v. MacCarthy* (L.R., 7 H.L., 243), that interference with the user of a dock where land is not taken is a subject of compensation. This estate may never be appropriated to those purposes.

The CHAIRMAN: The petitioner alleges that the estate is favourably situated for certain commercial purposes for which he intends hereafter to sell it, and that its value is partly dependent on the purposes to which it may be applied, and therefore that the proposal of the bill would tend to diminish its value. The Court must look at the physical circumstances of the case and consider whether the estate is by nature adapted for these purposes. Under the circumstances we Allow the *locus standi* of the Petitioner.

Agents for Petitioner, *Field, Roscoe & Co.*

Petition of (2) THOMAS RIDGWAY BRIDSON and HENRY SMITH, on the Petition of HENRY SMITH (for himself and Co-Trustee under the will of the late RICHARD SMITH).

Practice — Co-Trustee — Signature of one, to Petition—How far sufficient.

A petition headed "The petition of Thomas R. Bridson and Henry Smith, on the petition of

or running powers, &c., sought over their railways; (3) the notice served upon them as owners, &c., by the promoters, was served *ex abundanti cautela*, but they are not the owners, &c.; of the lands in respect of which it was served; (4 and 5) the bill contains no provisions affecting them, and they are not entitled to be heard against it according to practice.

Pope, Q.C. (for petitioners): The petitioners are joint owners of the line between Chester and Birkenhead, with a branch to Parkgate. The whole of the district from Hoylake to Parkgate, situated as it is on the estuary of the Dee, is becoming a residential district of considerable importance, and we now carry the principal passenger traffic of that district, and the promoters obviously propose to compete with Parkgate for the conveyance of the residents of that district to Liverpool, *e.g.*, between Heswell and Liverpool. Although the competition would not affect the profits of the companies as a whole, it might afford a starting point for competition of a more serious nature.

O'Hara (for promoters): Against a similar proposal to this in 1873, the bill then being for a line stopping at Heswell, both the companies petitioned on the ground of competition, but their *locus standi* was disallowed.

Mr. RICKARDS: If there is any traffic at all from that district it must go at present by the London and North-Western and the Great Western railway route.

The CHAIRMAN: The *locus standi* of the Petitioners is Allowed.

Agent for Petitioners, *Roberts*.

Agent for Bill, *Rees*.

HYDE GAS BILL.

Petition of HYDE LOCAL BOARD AND CONSUMERS.

7th March, 1881.—(Before *Mr. PEMBERTON, M.P.*, Chairman; *Mr. HINDE-PALMER, M.P.*; *Mr. PARKER, M.P.*; *Sir JOHN DUCKWORTH*; *Mr. RICKARDS*; and *Mr. BONHAM-CARTER*.)

Gas—Additional Capital—Local Board and Consumers—Conversion of Borrowed Money into Capital—Alleged Legalisation by Bill of act done Ultra Vires—Companies Clauses Act, 1845, s. 56-60—Security for price of Gas by Consumer to Company, by agreement—Application of Gas to production of Electricity—Postponement of Reduction of Price of Gas—Testing-place Clause—Gas Works Clauses Acts.

A petition was presented against a gas bill by the local authority, who were joined by some consumers in the district of supply. The bill was primarily one for raising additional capital, and in view of previous decisions the petitioners withdrew their claim to be heard against this power, and were conceded a *locus standi* against a clause for providing testing places within the district. The main ground of their claim to be heard was in respect of a recital in the preamble relating to the conversion of borrowed money into capital. The bill, however, contained no clause to this effect, and, further, it was pointed out that the conversion could already be effected by secs. 56-60 of the Companies Clauses Act, 1845, which was incorporated in a previous special Act. In addition, the petitioners claimed to be heard against a clause (29) for giving security to the company by consumers in cases of a fresh supply of gas, and against a clause (24) allowing the company to apply gas to the production of electricity. It was urged, however, that clause 29 made no change in the general law except by agreement, and that the injury inflicted by a possible loss from the application of gas to electric purposes was of too unsubstantial a nature to give the petitioners a right to be heard:

Held, that the petitioners were not entitled to a *locus standi* except against the clause for providing testing-places in the district.

(But now see S.O. 134 A.)

The *locus standi* of the petitioners was objected to, because (1) no lands, &c., rights or interests of theirs will be taken or affected by the bill; (2) the bill does not alter or affect the provisions of the Gas Works Clauses Act, 1847, as to the matters referred to in paragraphs 3 and 4 of the petition; (3) the conversion of loan capital into share capital has been effected under the existing powers of the promoters; (4) the promoters deny that there have been any irregularities in their accounts, but even if there had been, the existing remedy is sufficient, as is manifest from the fact that proceedings have been taken by the petitioners at Quarter Sessions; (5) the promoters do not seek any new power in relation to the payment of arrears of back dividends, and the bill does not contain the powers referred to, and objected to in paragraphs

involve any injury to the consumers but the contrary. With respect to the security clause (clause 29), that only says that the security shall be by agreement; but if there is any difficulty in agreeing, the amount shall be determined in the manner provided by the Gasworks Clauses Act, 1871, by which both parties are bound. That contains no new feature except where it is by agreement.

The CHAIRMAN: The *locus standi* of the Petitioners is *Disallowed*, except as against the testing-place clause (clause 27).

Agents for Promoters, *Sharpe, Parkers & Co.*

Agents for Petitioners, *Dyson & Co.*

LANCASHIRE AND YORKSHIRE RAILWAY BILL.

Petition of JOHN THOMAS SAWYER.

27th April, 1881. — (Before Mr. HINDE-PALMER, M.P., Chairman; Sir JOHN DUCKWORTH; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Railway—Owner of Business Premises—Stopping up of Thoroughfare—Obstruction of Most Convenient Access—Deterioration in Value of Property — Road Authority — Representation—Private Interest in Street.

The owner of business premises, which were, however, in the occupation of a tenant, petitioned against a railway bill which empowered the promoters to convert a thoroughfare into a *cul-de-sac*. The road proposed to be appropriated by the promoters did not pass the petitioner's premises, but ran at right angles to the road upon which the property abutted, and formed with it the most convenient but not the sole access to the premises, and the petitioner claimed to be heard on account of obstruction of access to and consequent depreciation in the value of his property. The thoroughfare in question was a public road, and the *locus standi* of the road authority, who also petitioned, was not disputed:

Held, however, that the petitioner had such a special interest in the road as to entitle him to a *locus standi*.

The *locus standi* of the petitioner was objected to, because (1) he only objects to clause 21 of

the bill, which provides for closing part of what was formerly used as a road or street, and known as Mill-hill, and leading from Long Mill-gate to Gibraltar in Manchester; (2) his property does not, as might be inferred from the petition, abut upon Mill-hill, although it does upon Gibraltar; (3) he does not and could not with truth allege that the portion of road proposed to be closed gives access to his property because (for instance) his premises open upon it. His complaint is upon the face of it only such as any inhabitant of Manchester might make to the interference with this ancient and public (if public) road, as it is described in the petition; (4) the custody and control of streets in Manchester is in the corporation, who (unless the petitioner's premises opened upon the street proposed to be closed, which is not the case) are the only parties entitled to be heard as to the alleged interference; (5) the corporation of Manchester have petitioned against the said clause 21 and their *locus standi* is not disputed.

Willis Bund (for petitioners): The petitioner is the owner of large warehouses and premises in Manchester, abutting upon a street called Gibraltar, which runs at a short distance into a street called Mill-hill, which the promoters proposed to absorb, thereby converting Gibraltar into a *cul-de-sac*, and cutting off all access from the direction of Mill-hill. It is true that he will still have an access *via* Mill-street, which is not touched by the bill, from the opposite direction, but the gradient down Mill-street to his premises is very steep, and owing to a turn of a sharp angle he cannot take long loads by that way. The gradients *via* Mill-hill and Gibraltar, the route which will be stopped up, are much more gradual and he will lose his most valuable access. The petitioner is the owner and not at present in occupation, but in the *Lancashire and Yorkshire* case (1 Clifford & Rickards, 235) both the owner and occupier were heard. We have received notice to quit from the tenant in consequence of the proposed obstruction of the thoroughfare.

The CHAIRMAN: The petition does not allege that you have received notice.

Bund: It has been served upon us since the petition has been lodged. In *Maltby's Petition against the Midland Railway Bill* (2 Clifford & Rickards, 298), access was only rendered less convenient. We allege depreciation in the value of our property by reason of the bill.

Pope, Q.C. (for promoters): The petitioner does not claim to be heard as a trader, but only as an owner, and as such he has no special interest to distinguish his case from that of other

inhabitants and owners of property in Manchester. Any injury he may sustain is too remote for founding a claim to a *locus standi*. Against the *Midland Railway Bill* (2 Clifford & Stephens, 108), Mr. Lane Fox, a landowner who alleged depreciation in the value of his premises on account of the powers taken by the bill, was refused a *locus standi*.

Mr. RICKARDS: In that case the petitioner was only apprehensive of a contingent injury. The houses on the property were not yet built.

Pope: I refer also to the case of the petitioner against the *North London Railway Bill* (1 Clifford & Rickards, 110).

The CHAIRMAN: The *locus standi* of the Petitioner is *Allowed*.

Agents for Bill, *Dyson & Co.*

Agents for Petitioner, *Chester, Mayhew, Groome, & Griffiths.*

LEA BRIDGE, LEYTON AND WALTHAM. STOW TRAMWAYS BILL.

Petition of (1) NORTH METROPOLITAN TRAMWAYS COMPANY.

28th March, 1881.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE-PALMER, M.P.; Mr. PARKER, M.P.; Sir JOHN DUCKWORTH; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Tramways, Metropolitan, Competition between—Physical Interference with Existing, in Constructing Proposed Tramways — Tramway Traffic, Obstruction to, Apprehended — Termini and Starting Points of Competing Tramways, Distance Between.

The North Metropolitan tramway company, having an authorised line from the City to Leytonstone, opposed, on the ground of competition, a projected tramway line starting from the Clapton-road and running along the Lea Bridge-road into Epping Forest. The petitioners also alleged, *inter alia*, that although there would be no physical junction with their system, the starting point of the new line was situated so close to the North Metropolitan tramway that there must be obstruction to their traffic or interference with their rails. The promoters replied that the bill would authorize no such obstruction or interference, and that the petitioners would have a legal remedy if

any occurred. The promoters also denied that any competition would arise under the bill, the starting points and the termini of the two systems being respectively about two miles and a mile and a half from each other:

Held, that on neither of the grounds alleged had the petitioners a *locus standi*.

The *locus standi* of the North Metropolitan tramways company was objected to, because (1) no property or works of the petitioners will be taken or affected, nor, as they themselves admit, is any junction or physical interference with their tramways contemplated by the bill, and the mere statement that it will not be possible to construct and lay down the intended tramways without disturbing or interfering with a portion of their tramway in the Clapton-road gives the petitioners no *locus standi*; (2) the promoters do not admit that under the bill there will be any obstruction of traffic from, or competition with, the petitioners' tramways, but if any such obstruction of traffic or competition should occur, it will not be of a character entitling the petitioners to appear according to practice; (3) the allegations with regard to the engineering defects of the proposed tramways and as to the character of the undertaking and the estimate of expense, even if well founded, would not give the petitioners any right of opposing the bill, and the same objection applies to the statement that the proposed tramway is unnecessary, that it will not prove remunerative, and that hereafter it should be constructed by the petitioners and worked as part of their undertaking; (4) the consents of the local authorities and road authorities have been obtained by the promoters as required by the S. O., and as to any apprehended interference under the bill with roads and streets within the Metropolitan limits, the Metropolitan board and the board of works for the Hackney district have petitioned and their *locus standi* is not objected to. So far, therefore, as the bill will interfere with the roads and streets through which the proposed tramways will pass, the interests of the public will be sufficiently protected by the proper authorities, and by the general law. The petitioners have no interest in the streets or roads except as individuals, and have no right to be heard upon their allegations as regards interference with the traffic in or injury to such roads and streets; (5) the petition contains no allegation and discloses no sufficient interest in respect of which the petitioners are entitled to appear according to practice.

Pope, Q.C. (for North Metropolitan tramways company): The bill proposes the construction of a tramway commencing in Clapton-road, passing along the Lea Bridge-road, and terminating at a point in the road leading from Whipp's-cross to Woodford. We claim to be heard (1) on the ground of competition, and (2) on the ground that, though the proposed tramway does not join ours, it will interfere with us at its starting point. One of our authorised branches goes to Leytonstone from the City; we also run from Upper Clapton to Snaresbrook. We say that the district through which the intended tramways will pass is not calculated to supply more than a very inconsiderable amount of traffic, and whatever traffic could under the most favourable circumstances be calculated upon must mainly consist of traffic now carried by us, and therefore abstracted from our system. Such a competition is not justified by the circumstances of the district. As to apprehended physical interference, the promoters do not make a junction with us. If they did, we should necessarily have had a *locus standi*; but we say it will not be possible to lay down the intended tramway as shown on the deposited plans without disturbing or interfering with our tramway in the Clapton-road.

Clifford (for promoters): The bill does not propose or authorise any physical interference with the petitioners' tramway. If, therefore, we should disturb their rails in laying down our own, they would have a legal remedy. As to the case of competition, it is of the most shadowy kind. To establish such a case there must be reason to apprehend a substantial diversion of traffic. There must also be competition at the starting points and at the termini of the respective systems. Here our starting point is the Clapton-road, and theirs is at Whitechapel, some two miles distant, while we go into Epping Forest, and they stop short at Leytonstone, at least a mile and a half from our terminus. The two lines, therefore, tap different districts, and accommodate traffic of a different character. Practically there can be no competition between lines of tramway so situated.

The CHAIRMAN: The *locus standi* of the Petitioners is *Disallowed*.

Agents for Petitioners, *Sherwood & Co.*

Petition of (2) THE EAST LONDON WATERWORKS COMPANY.

Waterworks Company, Interference with Pipes of, by Tramway—Damage to Water mains during

Construction of Tramway—Tramways Act, 1870—Protection to Water Pipes and Mains from Tramway Works, under.

The Tramways Act, 1870, contains provisions protecting the pipes and mains of gas and water companies from injury during the construction of tramways, and imposing daily penalties for any interruption to the gas and water supply. Notwithstanding these provisions a water company asked for a limited *locus standi* against a tramway bill, alleging that experience had shown that the safeguards in the General Act were insufficient:

Held, that, the General Act seeming to cover all possible injury, the *locus standi* must be disallowed.

The *locus standi* of the East London waterworks company was objected to, because (1) no property of theirs will be taken or affected, and so far as regards the petitioners' mains and pipes they are amply protected by the provisions of the general Acts passed by Parliament for the purpose of affording such protection, and such provisions of the general Acts are duly incorporated in the bill; (2) the petitioners have no monopoly of the streets and roads under which their mains and pipes are laid, but only possess an easement for the purpose of laying such mains and pipes under the supervision and control of the respective local or road authorities, and the possession of this easement does not confer on them the right of objecting, as they do, to the expediency of constructing the proposed tramways along the Lea Bridge-road, nor does it entitle the petitioners to oppose the bill on the grounds alleged by them, namely, that the route selected by the promoters is not a convenient or proper one, and that there is no public demand for the construction of the proposed tramways; (3) the petitioners are not the local or other authority representing any parish or district traversed by the proposed tramways, or charged with the control of the street to be so traversed, and as to any of the questions affecting the public convenience raised by the petitioners, they are only concerned as individuals and have no right to represent the public; (4) the petition alleges no sufficient interest entitling the petitioners to be heard; if entitled to appear at all they can, according to practice, be heard only for the purpose of protecting their pipes and works

traversing for that distance a road, along the first mile and a half of which, as it appeared in evidence, there were about 100 houses. On a petition of frontagers residing along the whole course of the proposed tramway, the promoters conceded a *locus standi* to frontagers within the Metropolitan boundary, but objected that the remaining portion of the road was not a "street" within the meaning of the S. O., and that frontagers on this portion of the road were not entitled to appear :

Held, that while a line of continuous villas in a suburban road would probably be within the S. O., a hundred houses in a mile and a half of road were not enough to constitute a street, and *locus standi* of petitioning frontagers outside the Metropolitan limits therefore disallowed.

The *locus standi* of John Griffin, Thomas Fish, and others, was objected to, because (1 and 2) none of the following petitioners [*named*] are owners, lessees, or occupiers of land or premises which may be compulsorily taken under the bill, nor are they owners or occupiers of any house, shop, or warehouse in any street through which it is proposed to construct the tramways or any of them; (3) no one of the following petitioners [*named*] is the owner, lessee, or occupier of land or premises which may be compulsorily taken under the bill, nor is any one of such petitioners the owner or occupier of any house, shop, or warehouse in any street through which it is proposed to construct the tramways, or any of them, inasmuch as their respective houses, shops, or warehouses are not situate in a street within the meaning of S. O. 135; (4) the petition does not show that the hereinafore named petitioners have any such interest as, according to practice, enables them to be heard; (5) as regards such of the petitioners, if any, as are *bona fide* frontagers, under S. O. 135, they are only entitled to be heard within the limits of such S. O.

Hanly, Parliamentary agent (for the petitioning landowners and frontagers): The promoters take power to purchase by compulsion the property of some of the petitioners.

The CHAIRMAN: I suppose their *locus standi* is conceded?

Clifford (for promoters): They will, of course, be entitled to a general *locus standi*, but the difficulty we are in is this:—The petition mixes up—unfairly as we contend—two classes

of petitioners, namely, landowners whose land will be compulsorily taken, and who would appear as of right, on all the allegations in the petition, and frontagers who are only entitled to appear upon allegations limited by the S. O. Assuming that, as may probably be the case, we drop our compulsory powers, we shall then in committee be left face to face not with landowners, but with frontagers appearing on a landowners' petition, and making all sorts of general allegations on preamble and on merits. As frontagers these gentlemen have no right to make such allegations or to appear upon them.

Mr. RICKARDS: How many of the petitioners are owners whose land will be compulsorily taken?

Hanly: Ten. It is not at all unusual for owners to join with frontagers in petitioning against a tramway bill. (*Woolwich & Plumstead Tramways*, 2 Clifford & Rickards, 321.) Here the object of joining in one petition is to save expense.

The CHAIRMAN: It will be easy for you to agree as to those of the petitioners who are owners, lessees, or occupiers compulsorily affected, and they will have a general *locus standi*. What is the objection to the remaining petitioners?

Clifford: The proposed tramway starts at the Clapton-road and runs for about one-fifth of its course along the Lea Bridge-road. At the bridge crossing the Lea it passes beyond the metropolitan boundary. Our chief objection is that for the remaining distance the tramway does not pass along a "street" as defined in S. O. 135, but along a rural road, never contemplated by the S. O.; and we say that none of the petitioners outside the metropolitan limits are frontagers within the meaning of the S. O. We distinguish, therefore, between the petitioning frontagers, and object to the *locus standi* of all excepting those residing in the Lea Bridge-road.

The CHAIRMAN: We had better hear this principle argued, and then we can settle what names to retain and what to strike out.

Hanly: In the *Brentford, &c., Tramways Bill* (2 Clifford & Rickards, 139) a road which was a less frequented road than this, and with a fewer number of houses upon it, was treated as a street. At all events, at the Clapton end of this route there is a street, because there are there continuous houses.

Clifford (in reply): We concede a limited *locus standi* to the petitioning frontagers between our starting-point at Clapton and Lea-bridge. The question is whether the character of the road after passing Lea-bridge is such as to bring it within the S. O. I submit that what

was in the mind of Parliament in passing the S. O. was the possible obstruction of traffic by tramways within a town where there are for the most part continuous houses or shops on both sides of the way, and vehicles would often stand opposite these houses or shops. That is the reasonable inference arising from the words "the owner or occupier of any house, shop, or warehouse in any street through which it is proposed to construct a tramway." Parliament could never have intended that tramways upon rural roads should come within the S. O.

The CHAIRMAN: Tramways are so much more essential in the suburbs than in towns that one would be inclined at first sight to extend the word "street," as used in the S. O., to such roads as we find in the suburbs. For instance, I think we should hold that a line of continuous villas was a "street" within the S. O.

Clifford: Here the evidence will show that there is no continuous line of villas, and that beyond Lea-bridge the road can hardly be called a suburban road, but is a road passing through agricultural land for a considerable distance, a road mainly of a rural character, on which it is impossible that a tramway should cause anything like the obstruction to traffic which the S. O. was designed to prevent. As to the Brentford case, the question of "street" or "road" was not in issue.

Mr. RICKARDS: The question appears to have been suggested in argument.

Clifford: But it did not enter into the decision. The main question was, whether a stable was "premises" within the meaning of the S. O.

The CHAIRMAN: We could not say that the Great North-road, though it becomes a rural road a few miles from London, is not a street at the point at which it starts.

Clifford: That is our case. We admit that our tramway starts in a street, and that up to the Metropolitan boundary the petitioners are frontagers within the S. O.

The CHAIRMAN: Will it not answer the purpose of the petitioners if the frontagers in the Lea Bridge-road are admitted?

Hanly: We would rather retain as many as we could on the petition. Each individual case ought to be represented.

[Mr. John Griffin and Mr. Tewson were then examined for the petitioners to show the character of the road extending from Lea-bridge to Epping Forest.]

The CHAIRMAN (to Mr. Tewson): Starting at the limits of the Metropolitan district, and taking a distance of a mile and a half along the course of this tramway, how many houses are there on both sides of the way?

Witness: About 100 on both sides.

Clifford said that his witnesses reckoned less than half that number.

The CHAIRMAN: We think that a hundred houses in a mile and a half are not enough to constitute a street. A general *locus standi* will be Allowed to such of the Petitioners as are owners, lessees or occupiers of land to be compulsorily taken, and a *locus standi* under S. O. 135 to those frontagers who are within the Metropolitan district.

Locus standi of remaining Petitioners Disallowed.

Agents for Petitioners, Hanly & Carlisle.

Agent for Bill, Sharkey.

LONDON SEA-WATER SUPPLY BILL.

Petition of (1) THE LAMBETH WATERWORKS COMPANY; (2) CHELSEA WATERWORKS COMPANY; (3) GRAND JUNCTION WATERWORKS COMPANY.

21st March, 1881.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. PARKER, M.P.; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Sea-Water Supply—Water Companies—Competition—Power to Supply Local Authorities for Street Purposes—S. O. 130 [Competition a ground of Locus Standi]—Limited Locus—Practice—Right to Appear to Procure Insertion of Agreed Clauses.

The bill incorporated a company for the supply of London with sea-water, and the petitioners were water companies within the Metropolitan area. They claimed especially to be heard against a clause authorising the promoters to enter into arrangements with local authorities and other bodies having the control of the streets for the supply of sea-water in bulk or otherwise, for street purposes, e.g., watering and the flushing of sewers. It was objected that companies who supplied fresh water only could not be heard against the supply of sea-water on the ground of competition, which would, under any circumstances, be of a remote and unsubstantial nature:

Held, however, that the petitioners were entitled to a limited *locus* on the ground of competition, the water in both cases being applied to similar purposes.

Where clauses have been agreed to be inserted by the promoters at the instance of petitioners, the latter are entitled to a *locus standi* for the purpose of ensuring their insertion before a committee.

The *locus standi* of the petitioning companies was objected to separately, but upon similar grounds, viz., because (1) no lands or property, rights or interests of theirs, will be taken or interfered with under the provisions of the bill; (2) the allegations in the petitions that the works sought to be authorised would materially interfere with and prejudicially affect various mains and pipes belonging to the petitioners laid down in the parishes mentioned in the petitions do not entitle the petitioners to be heard against the bill, because the petitioners have only an easement to lay such mains and pipes, and are not the road authority in whom the control of the public roads is vested. The bill only contains the usual and necessary clauses granted in such cases, and the petitions do not specify any of their mains or pipes which are to be interfered with under the provisions of the bill. In any view such allegations do not entitle the petitioners to be heard against the preamble; (3) the object of the bill is to supply sea or salt water for sanitary and other purposes, and the supply of such water within the district supplied with fresh water by the petitioners, for any of the purposes authorised by the bill and objected to by the petitioners, does not entitle them to be heard on the ground of competition, which would, under any circumstances, be of the most remote and unsubstantial kind; (4) the allegations in the petitions that it is not necessary or expedient that powers should be granted to the promoters for supplying water (i.e., sea water) for the purpose of road or street watering in any parishes supplied with water (i.e., fresh water) by the petitioners, or that the promoters should have general powers conferred upon them for the expenditure of capital for the purpose of purchasing, renting, or otherwise providing and maintaining baths, or in reference to capital sought to be authorised by the bill, do not entitle the petitioners to be heard; (5) none of the allegations in the petitions disclose any ground for a hearing according to practice.

Clerk, Q.C. (for all the petitioners): The bill is for authorising the construction of works for supplying sea-water to certain parts of London and other places. We withdraw our claim to be heard against the supply of water for baths in houses, and we have agreed to clauses for the

protection of our mains and pipes; but we ask to be heard in respect of the powers asked for by the promoters to supply local authorities with water for flushing the sewers and watering the streets. The petitions of the companies allege, "That by the said bill it is proposed to be enacted that the company may, from time to time, enter into and carry into effect such contracts and arrangements with any corporation, local board of health, urban or rural sanitary authority, or other local authority, and the trustees of any turnpike or other road, or any highway board, or any surveyors of any highway, and any railway company and other companies, bodies or persons with respect to the supply of sea-water in bulk or otherwise, and on such terms as the company think fit. That your petitioners are at present supplying with water the various local authorities in the districts affected by the bill for the purposes of watering the streets and flushing the sewers, and they humbly submit that it is not necessary in the public interest, and that it would be unjust to your petitioners, that the powers thus sought by the company should be granted." We shall suffer considerably by competition of that kind. With regard to the objection that they do not propose to supply fresh but sea-water, they propose to supply it for the same purposes, and we clearly come within S.O. 130.

Mr. RICKARDS: In the *Caledonian Railway Bill* (*supra*, p. 23), where the company proposed to establish an hotel we refused a *locus standi* to persons representing an existing hotel.

Clerk: Hotels do not exist under Parliamentary powers like water companies. In the case of the *Liverpool Improvement Bill* (1 Clifford & Stephens, 3, and 71), the Liverpool abattoir company and slaughterhouse keepers were granted a *locus standi* against a clause for the establishment of slaughter-houses by the corporation. I refer also to the *Furness Railway Bill* (*supra*, p. 50), on the *Petition of the Ulverston Local Board*.

Holway (for promoters): The competition here is neither direct, for it relates to the supply of a different commodity, nor substantial. It is an analogous case to that of railway companies claiming to be heard against tramway bills. The petitioners do not allege special injury. At any rate the petitioners are not entitled to be heard against the preamble.

The CHAIRMAN: The allegations cited on behalf of the petitioners sufficiently raise the question. *Quoad* watering roads, sea-water and fresh water would be in direct competition.

Clerk: We also ask for a *locus standi* to see that the clauses offered to us for the protection of our mains and pipes are inserted. We do not

Railway Company's Bill (1 Clifford & Stephens, 163) on identical grounds.

Pope, Q.C. (for promoters): In the case of the London, Chatham, and Dover company, under their Arbitration Award Act each class of shareholders, ordinary, preference, and debenture stock holders has a separate meeting of its own, so that the case is different to that of the Caledonian company where the preference shareholders would vote with the ordinary shareholders.

The CHAIRMAN: Is it not therefore necessary for the petitioners to show that their interest is different from that of the class of preference shareholders of which they are a part?

Browne: No, they come under the same rule as Messrs. Baird in the case cited. There the preference shareholders had a right to vote at the meetings of ordinary shareholders, and Messrs. Baird did not attend or dissent at those meetings. I refer the Court also to Messrs. Baird's petition against the *Caledonian Company* (2 Clifford & Stephens, 257).

Pope Q.C. (in reply): In Messrs. Baird's case the preference shareholders were simply members of the company, and entitled to vote with ordinary shareholders at the general meetings, not as here members of a class distinctly legislated for by Parliament and entitled to vote at meetings of preference shareholders, which have been accordingly held under S. O. 62. The petitioners have no distinct interest from other preference shareholders, and under the special constitution of the company they are on a par with ordinary shareholders in the matter of voting, and therefore come under the same rules as to representation. The very object of the award under the Arbitration Act, was to enable each class to protect itself against the encroachments of any other class, and the arrangement then made was in effect to constitute a separate company as it were of preference shareholders. Our case is fairly stated in our objections to the *locus standi* of the petitioners, who have never recorded their dissent from the bill.

The CHAIRMAN: In this case we think it will be safe, having regard to the strict terms of the S. O., to Allow the *locus standi* of the Petitioners.

Agents for Promoters, *Martin & Leslie*.

Agents for Petitioners, *Hanly & Fellowes*.

MANCHESTER, SHEFFIELD, AND LIN. COLNSHIRE RAILWAY (NEW WORKS) BILL.

Petition of (1) TIMOTHY COOP AND JAMES MARSDEN.

17th March, 1881.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Railway Abandonment Bill—Owners Complaining of Partial Abandonment of Authorised Line—Statutory Provision for Benefit of Owners, Repeal of, in Railway Abandonment Bill—S. O. 17—Withdrawal of Compulsory Powers of Purchase.

By an Act of 1875 the Wigan railway company obtained power to make a line into Wigan, and inserted various provisions for the benefit of certain colliery proprietors and owners whose land, &c., would be compulsorily affected. By an Act of 1878 the time for making the line was extended, and an agreement was scheduled providing for the carrying into effect of the arrangements of 1875. A bill was now promoted by a third company authorising the Wigan company to abandon so much of the line authorised in 1875 as affected the colliery proprietors and owners, and repealing the section in the Act of 1875 inserted for their protection. On their petition against the bill:

Held that their case was not to be distinguished from the ordinary case of a landowner seeking to be heard against a railway abandonment bill, and that the provisions inserted for their benefit in the Act of 1875 were "simply part of the purchase-money."

The *locus standi* of Timothy Coop and James Marsden was objected to, because (1) no lands or buildings of theirs will be taken or interfered with; (2) they really petition against the abandonment of a portion of railway A. authorised by the Wigan Junction Railways Acts 1875, against which they are not entitled to be heard according to practice; (3) section 37 of the said Act of 1875 which is proposed to be repealed by clause 34 of the bill was inserted in that Act for the protection of the petitioners' land in, over, or through which the works proposed to be abandoned were

authorised to be constructed, and as none of the petitioners' lands or property will be taken or affected under the powers of that Act if the abandonment be sanctioned by Parliament, the petitioners are not entitled to be heard against the bill; (4) clause 34 of the bill is the only clause which in any way affects the petitioners, but the promoters contend that the petitioners are not entitled to be heard even against that clause according to the practice of Parliament; (5) the petitioners do not allege any ground, nor have they any interest which entitles them to be heard consistently with practice.

Pembroke Stephens (for T. Coop and J. Marsden): This is a case of partial abandonment of an authorised railway. The points in issue relate exclusively to the Wigan Junction railway, but the bill is brought in by the Manchester, Sheffield, and Lincolnshire railway company. There have been certain intimate relations existing hitherto between those two companies which by the bill are carried further. The bill authorizes the Wigan Junction railway company to abandon the construction of about one-fourth part of railway A., authorised by the company's Acts of 1875 and 1878. By clauses 31 and 32 the bill purports to make compensation for damage to land by entry, &c., and in respect of works abandoned, by clause 33 it provides for the release of moneys deposited in respect of the portion of railway proposed to be abandoned, and by clause 34 it seeks to repeal section 37 of the Act of 1875. The bill of 1875 authorising the construction of railway A. sought to take compulsory powers over certain lands belonging to these petitioners. Upon their opposition the provisions of that bill were in various respects modified. The company were to divert the river Douglas, and in doing so the Act of 1875 bound them (sec. 37) to carry out certain works for the protection of the petitioners in respect of the lands in which they were interested as colliery proprietors. Thus, within 18 months from the passing of the Act the company were to stop up a portion of the old course of the river Douglas and were to construct a new course with a proper puddled and paved bed and river walls. The company were also bound by sec. 37 to construct and maintain, until it was adopted as a public roadway, a substantial stone bridge over the proposed new course of the river, at a point to be indicated by the petitioners. The company were also before the opening of railway A. to construct, and afterwards maintain at their own cost, suitable and convenient sidings for the loading of coals from the pits then being sunk on the petitioners' land. There

were various other provisions in the Act of 1875 for the petitioners' benefit, and in order to carry them into effect an agreement dated Dec. 30th, 1876, was entered into between the petitioners and the Wigan company as to the construction of a new street and other matters, and the lands required for those purposes which were to be mutually provided by the petitioners and the company, and it was among other things stipulated that all purchase and other moneys payable by the Wigan company under those presents should be considered as having become due on the 2nd of November, 1875. By the Act of 1878 the period for the purchase of land and for the completion of works was extended, and the agreement scheduled to that Act between the Wigan company and the petitioners was confirmed. This agreement among other things provided for the completion by the Wigan company, with all reasonable expedition, of various railways, including railway A. Besides being landowners and colliery proprietors, the petitioners also carry on the business of cotton spinners upon the lands dealt with by the Act of 1875. The petitioners are therefore seriously affected by these Acts and agreements. We allege that, owing to the failure of the Wigan company to carry out the works thus authorised and agreed upon, we have been subjected to great loss and inconvenience. We have been compelled to continue our mining and factory operations at a disadvantage, and have been deprived of the benefits intended to be secured by the Acts of 1875 and 1878, though remaining liable at any moment to have the whole surface of our property revolutionised through the commencement of these works. The bill now seeks to abandon the construction of railway A. not as a whole but of just so much of that railway as affects our interest; and it further proposes expressly to repeal section 37 in the Act of 1875, which was inserted for our protection. The agreement scheduled to the bill shows that this step is not taken at the instance of the Wigan company themselves, but is a condition imposed upon them by the Sheffield company. As owners of lands we have received notice of the proposed abandonment, and also in pursuance of S. O. 17 of the intention to repeal section 37 of the Act of 1875. By repealing this section we shall be deprived of our legal remedy for the failure of the company to carry out the provisions of 1875 for our benefit. (*Forth Bridge Abandonment Bill, supra*, p. 49.)

The CHAIRMAN: Your rights under the agreement are not saved by the bill?

Stephens: There is not a word about them, though we have had notice in respect of the repeal of section 37.

Mr. RICKARDS: The railway is abandoned and the petitioners' lands are not taken. Do you contend that they still have the right to hold the company to the performance of the stipulations inserted for their protection when it was intended to take their land?

Stephens: The promoters put an express clause into this bill repealing the section in the Act of 1875, and so disturbing the whole of the existing arrangement.

The CHAIRMAN: What consideration will the company receive for the execution of the works which you say they are still bound to execute for the benefit of the petitioners?

Stephens: The company have already gained their compensation by means of this arrangement of 1875. They obtained the advantage of getting into Wigan by an access which was refused them in 1874, and which has enabled them to effect a bargain with the Sheffield company. They passed their bill in 1875 on the faith of putting into it the provisions for our protection. Having got their line as a whole, and made it the means of driving a bargain with the Sheffield company, they now propose to do away with everything that formed the consideration for being allowed to come there at all. Where statutory provisions for the benefit of particular persons are altered, such interference entitles the petitioners to be heard.

Mr. RICKARDS: Yes, if the circumstances are the same; but the question here is whether the circumstances are not entirely altered. Those things which were to be done for the benefit of the petitioners would appear not to be binding when the line is abandoned, because the consideration fails if the line is abandoned and the company do not take the land.

Stephens: It will only fail from the voluntary act of the parties who are seeking to get rid of their obligation. It is they who are striving to alter the *status quo* to our injury. According to May's *Parliamentary Practice* "a *locus standi* has been allowed to parties holding an agreement with the promoters in order to secure themselves against interference with such agreement." The provisions embodied in the Act of 1875 and the agreement are not, as in ordinary cases, conditional upon the making of the line. The Act does not say, "if and when they make the railway," those conditions shall follow; they are binding conditions and covenants. Where there have been special agreements you have allowed a landowner to be heard even against abandonment bills. (*Caledonian Railway Bill, Petition of Sir Michael Shaw Stewart*, 1 Clifford & Stephens, 21; *North-Eastern Railway Bill, Petition of Bolckow, Vaughan & Co.*, 1 Clifford & Rickards, 107.)

The CHAIRMAN: Everything you were to receive was in consideration of the purchase of the land.

Stephens: You must look at the surrounding circumstances. If the company had not submitted to those conditions in 1875 they would not have got their line at all. They acquiesced in those conditions, obtained their footing in the district, and having got it they use it against us by cutting off just that part of the line to which the obligations attach, and by carrying the line in another direction, for they do not abandon the line as a whole. The moment sec. 37 is repealed we can no longer obtain specific performance of our contract. If companies are to be at liberty to come for a bill in one session and carry it because they agree to do things for the benefit of everybody who might defeat the bill, and then to come next year with a bill striking out so much of the Act as those onerous conditions were attached to, the parties in whose favour those conditions were inserted being told that they have no *locus standi*, against the amending bill, you will have plenty of railway companies bringing in such measures.

Worsley (for the promoters): The petitioners ask first for a general *locus standi* against the abandonment of line A. and secondly for a *locus standi* with regard to the repeal of sec. 37. They say this is not an abandonment of the whole of the railway, but only a partial abandonment, but that fact makes no difference with regard to the abandonment of line A. All the provisions in section 37 on which the petitioners rely as inserted for their benefit are conditional upon the opening of railway A, except the provision that the company shall, before the opening of that railway, construct and afterwards maintain suitable sidings, and that is conditional too upon the construction of the railway. Therefore so far as regards the abandonment of line A. the case of the petitioners is the ordinary one of a landowner opposing an abandonment bill, because he will lose the benefits he expected from the line. With regard to the agreement, we do not affect it in any way by the bill. That agreement is not contained in any part of the Act, a section of which we repeal. If, therefore, the petitioners have rights under that contract, those rights will remain. Section 37 says, that within eighteen months from the passing of the Act of 1875, the company shall stop up a certain portion of the old water course of the river Douglas, and fill up certain portions of the old course; but that does not mean that we shall carry out these works in any event. They are conditional upon the opening of railway A. The clause was inserted for the protection of

the petitioners, who were coal owners, against the damage they might suffer if the railway company without restriction had been authorised to take the lands and construct the railway and the other works. The clause was inserted in order that they should not be kept in suspense longer than was necessary. The meaning is that when and if the company make the railways the provisions of the clause shall come into effect; and we came under the restriction that if the thing was done at all it should be done in eighteen months. In the other provision, you find the words the company "may" do so and so, not "shall" and that before executing the works they shall do so and so for the protection of the petitioners. Our carrying out of these provisions is dependent on our taking the lands and executing the works.

The CHAIRMAN: Was this diversion of the river Douglas purely for railway purposes?

Worsley: Yes, it was for the railway. We could not have made our railway without it. The Mayor of Wigan, in his evidence in 1878, said it was necessary in 1875 to divert the Douglas in order to get room for the station.

Mr. RICKARDS: With regard to section 37, you say it was not a stipulation to divert the Douglas for the benefit of the petitioners, but it was a stipulation that if the Douglas was diverted it should be done in 18 months.

Worsley: Yes. The company would not go out of their way to put something into the bill for the benefit of the petitioners. To carry out these provisions we must have exercised powers which, being permissive, were powers which nobody could have compelled us to put in force. The whole thing is permissive.

The CHAIRMAN: We need not trouble you further. We think this is an ordinary case of a landowner seeking to be heard against an abandonment bill. It seems to us that all these provisions in the Act of 1875 were simply part of the purchase-money.

Locus standi Disallowed.

Agents for Petitioners, Lewin & Gregory.

Petition of (2) THE CORPORATION OF WIGAN.

21st March, 1881.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. PARKER, M.P.; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Railway Abandonment Bill—Corporation, Municipal, Opposing—Station, Site of, Changed—Streets, Expenditure on, by Corporation, on Faith of Railway Act—Street Authority, Complaining of Inconvenience to Traffic, through

Change in Site of Railway Station—Landowner, and Corporation, Distinction between as Opposing Abandonment Bills—S. O. 134 (Local Authorities Complaining that their Districts will be Injurious Affected)—Practice—Allegations in Petition, insufficiency of.

A municipal corporation petitioned against a bill for the abandonment of part of an authorised railway, and the substitution of another station for one alleged to have been the subject of agreement between the corporation and the company, when the latter obtained their original Act in 1875. On behalf of the petitioners it was stated that they had incurred considerable expenditure in the laying out of streets on the faith of the construction of the line and station; that the site of the station, though not exactly specified in the Act of 1875, was indicated in a subsection inserted for their benefit; and that the result of the bill would be great injury to the town and inconvenience to its traffic on the railway:

Held, that the petition raised no other case than that of a landowner complaining of the abandonment of the line, and of the loss of prospective benefits hoped for from its construction. *Locus standi* therefore disallowed, though had the petition raised more distinctly the question of the injury apprehended from the change in the site of the station, the Referees stated that their decision might have been different.

The *locus standi* of the corporation of Wigan was objected to, because (1) the petitioners are not the owners of any lands or buildings to be taken or interfered with; (2) the bill does not propose to alter, divert, or in any way interfere with any streets or roads of which the petitioners are the owners, or which are under their jurisdiction; (3) the petitioners allege that the bill will injuriously affect them and the inhabitants of their borough, but they do not state in what manner, and the promoters of the bill deny this general allegation, upon which the petitioners are not entitled to be heard without a specific statement of the injury apprehended; (4) the petition is in fact against the abandonment of a portion of railway A. authorised by the Wigan

Junction Railways Act, 1875, upon which the petitioners are not entitled to be heard according to practice; (5) they ask for payment of expenses incurred by them in their opposition to the Act of 1875, upon which they are not entitled to be heard; (6) the petitioners allege no ground which entitles them to be heard consistently with practice.

Pembroke Stephens (for the corporation of Wigan): The part of the bill of which the petitioners complain is the abandonment portion, the proposal being one which works a very important change in the position of the borough, whether it be regarded as a partial abandonment or as a total abandonment, and the authorisation for the first time of a new line in lieu of the old one.

The CHAIRMAN: The corporation petition as representing the general interests of the town?

Stephens: Yes, they have also a special grievance. In the first place they are the street authority. That somebody ought to be heard in reference to the interference with the general approaches of thoroughfares is clear.

The CHAIRMAN: Are any streets to be taken by the bill which would not have been affected by the existing Act?

Stephens: Though not taken, very much worse consequences will ensue than if they were taken. The agreement between the Wigan company and the Sheffield company which is scheduled and confirmed by the bill provides (*inter alia*) that the two companies are to agree between themselves what is to be done in the way of station accommodation at Wigan, and further that "the Wigan company shall at any time at the request of the Sheffield company apply to Parliament for liberty to abandon any part of the railways of the Wigan company which shall not be completed at the date of such application." This, then, is an abandonment bill undertaken by the Wigan company at the request of the Sheffield company, who decide practically how much or how little shall be abandoned and what shall be done with the part that is to be completed. As the municipal corporation and the urban sanitary authority, it is our duty to provide for and accommodate the traffic of the borough, and in relation to all matters of ordinary traffic and conveyance we represent the inhabitants and say that the bill will injuriously affect them. In 1875 we opposed the Wigan company's bill, and in consequence a clause was inserted for our protection. Amongst other provisions the company agreed, "from and after the opening of their railway"—not any part of their railway—"to provide and maintain certain accommodation at the passenger station in Wigan, namely, carriage access to both sides of the station and

from both sides of the town with other conveniences." In order to induce Parliament to pass the Act of 1875, the promoters laid before Parliament evidence showing the strong public necessity for the construction of the railway then proposed and since authorised. We fully confirm that necessity, and submit that the company should not now be relieved from making the railway or any part of it unless they are prepared to propose some equally good line, passenger station, and approaches as a substitute, and promote in Parliament a bill for that purpose. In the meantime we ask that the Wigan or the Sheffield company should afford the best possible accommodation for passenger or other traffic on so much of their railway as they have made (that is, on so much of the railway as they are not authorised to abandon). We have purchased property, designed a new street, and acquired Parliamentary powers to carry out such new street on the faith of the works authorised by the Act of 1875 being carried out. We have also incurred great expense in procuring the insertion of the protection clause, and we ask that the company may be required to pay to us the full amount of such expenses. What they propose now is altogether to discard the terminal station as arranged in 1875, and to cut the line short of the point where the terminal station was to be; and they agree with the Sheffield company that they will provide station accommodation merely to the satisfaction of the engineer of that company. By this proposal a complete revolution will be effected in the arrangements with regard to the traffic of the town of Wigan. Everything had been settled on the assumption that this railway would have its station on a convenient site in the heart of the town in connection with which different works were to be carried out. If the railway is to be put at another point, the whole of the expenditure to which we have been put will be useless. In place of the traffic going through streets intended and prepared for it, it will travel to and from a station in a place nobody dreamt of, and serious public inconvenience must result. We were parties to the arrangement of 1875, and if we cannot maintain the best arrangement—that is to say, the arrangement come to in 1875—we ought to be before the committee to procure the second best; the new proposals should certainly not be ratified behind our backs. Somebody ought to be there on the part of the town of Wigan, to see that the recital on which the agreement with the Sheffield company is based—viz., that the Wigan company are not in a financial position to complete the line according to the Act of 1875—is well founded.

Mr. RICKARDS: Does this differ from the ordinary case of landowners petitioning against an abandonment bill? Suppose a landowner alleges that he anticipated great advantage from the completion of the railway, and that the company agreed that if the line were made through his land they would place a station at a certain point: if the company propose afterwards not to take his land and not to afford him that accommodation but to abandon the line, in such cases he has no *locus standi*. Is not the same principle involved here? The corporation here anticipated a benefit from the completion of the line. The company for reasons of their own now desire to abandon the line. The corporation, you say, therefore sustain an injury. Should you not rather say that owing to the abandonment they do not receive an expected benefit?

Stephens: A corporation is not in the position of a landowner. A corporation does not look for personal pecuniary benefit, and moreover in this case the corporation have gone to expense.

Mr. RICKARDS: It comes to the same thing. The landowner represents his own interests, and the corporation represents the interests of the town. A landowner sometimes says "I have incurred expense in anticipation of the railway coming." It seems to me that the two cases are the same in principle. The loss of anticipated benefit by the abandonment of the authorised railway is what you complain of, and that loss is the same in the case of a landowner who says his estate will suffer or will not be improved as he expected if the railway is abandoned.

Stephens: A landowner may be taken as a party to the speculation for the construction of the railway. He agrees with the railway company for certain advantages, in consideration of his being subjected to certain disadvantages. That is not the case with a corporation. A corporation represents the inhabitants with regard to the streets.

Mr. RICKARDS: Admitting their representative character, the question is whether the abandonment inflicts any injury upon the town which the corporation represents?

Stephens: There is nothing in S. O. 134 to say that corporations shall not be heard against abandonment bills.

Mr. RICKARDS: But in order to obtain a *locus standi* the local authority must show that the provisions of the bill will injuriously affect their locality. We construe that to mean that the bill will inflict some positive injury upon it. An abandonment bill is simply the non-carrying out of some undertaking which possibly the local authority opposed. We know that landowners blow hot and cold. They will oppose

with all their power a bill affecting them, but when the promoters seek to abandon the line, they then oppose the abandonment. In such cases we have decided that the abandonment does not injure the landowner: it is only a negative injury at most.

The CHAIRMAN: When the Act of 1875 was passed, was the particular site of the passenger station agreed on and indicated?

Stephens: The terms of the Act of 1875 and the plans show that the site of the station was indicated, though there was no express statement in the Act where the station was to be. If the arrangement come to in 1875 is upset, the traffic will have to find its way through narrow and crooked streets to a much more inconvenient point, and that is a matter on which the street authority may reasonably claim a hearing. In the case of one of the underground railways, where the promoters came for an extension of time, the Metropolitan board of works, as representing the public interests, were allowed a *locus standi*, and there have been many similar cases.

Worsley (for the promoters): The corporation have no more right to be heard than Messrs. Coop and Marsden, whose *locus standi* was disallowed the other day.

The CHAIRMAN: Here the petitioners say that under the bill there will be greater inconvenience caused to the traffic of the streets than there would have been under the Act of 1875?

Worsley: The corporation say that in 1875 a particular site was indicated for the station, but there is no allegation to that effect in the petition, and there was no provision in the Act that the station should be constructed at a particular place. The powers in the Act of 1875 are permissive from beginning to end, the words being that the company "shall from and after the opening of their railway provide and maintain," and so on. As owners of the streets of Wigan in respect of which they had their *locus standi* originally, the corporation are in the position of ordinary landowners. This is a weaker case than that of the other petitioners who said not only that they had gone to great expense and suffered great injury but that we repealed sec. 37 put in for their protection. Section 32, which the corporation say was inserted for their protection, was clearly conditional upon the railway and works being constructed. [*He was then stopped.*]

Mr. RICKARDS: Reading the petition carefully I cannot come to any other conclusion than that it is a petition directed simply to the abandonment of the line.

The CHAIRMAN: We think we must treat the case as being simply a case of abandonment, and

must *Disallow* the *locus standi*. If the petition had more distinctly raised the question as to the alteration in the position of the station, if it had said that the old station would have been very convenient, and that the new station will be very inconvenient, it might have been a different thing. We do not think that that point is sufficiently raised in the petition, and we must consider the petition as being one simply against the abandonment.

Agents for Petitioners, *Sharpe, Parkers, Pritchard & Sharpe*.

Agents for Bill, *Wyatt, Hoskins & Hooker*.

MERSEY DOCKS AND HARBOUR BOARD BILL.

Petition of (1) JOHN LEECE.

17th March, 1881.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE-PALMER, M.P.; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Harbour Board—Acquisition of Pilot Boats—Control of Pilotage—Collection of Pilotage Rates—Officer appointed by Pilots under existing System—Abolition of Office—Claim to Compensation—Tenure of Office—Subject to Dismissal.

The bill authorised a docks and harbour board to acquire and work vessels for the pilotage of the port of Liverpool, and the petitioner was the collector of pilotage rates on vessels entering that port. The bill provided for the payment in future of all pilotage dues directly into the hands of the board, and therefore abolished the office of the petitioner, who claimed to be heard to secure compensation. The petitioner was, under a former special Act obtained by the promoters, obliged to make certain returns to the board, and it was argued that he therefore was in the position of being under statutory obligations towards the promoters, which position would be affected by the bill. It appeared, however, that he was appointed by the pilots, and not by the board, and that he was subject to dismissal at any time after due notice:

Held, that in accordance with previous decisions

the petitioner's tenure of office was not such as to entitle him to be heard against the bill.

The *locus standi* of the petitioner was objected to, because the only ground on which he claims to be heard on his petition against the bill is that he may, if the bill pass, be deprived of his occupation as collector of the pilotage rates of the port of Liverpool and lose the remuneration which he now receives as such collector, but the petitioner is not upon this ground entitled to be heard according to the practice of Parliament.

Round (for petitioner): The bill is entitled "a bill for authorising the Mersey docks and harbour board to acquire and work vessels for the pilotage service of the port of Liverpool, to borrow moneys for that purpose, and to make bye-laws for regulating the division among pilots of pilotage earnings and for altering the times of vacation of office by members of the board and the times of nomination, election and appointment of new members." The object of the bill is to abolish the present system of pilotage which is conducted by people who are owners of pilot boats, and to put the pilotage into the hands of the Mersey dock and harbour board. The petitioner is the collector of the pilotage rates under the present system, and his office will be abolished if the bill is passed. The preamble recites the mode in which the rates are at present collected by the petitioner, and the pilot annuity fund maintained, and then sets forth the expediency of the Mersey dock board acquiring and maintaining all the pilot boats for the future. The petition alleges that the petitioner was appointed by the pilots of the port of Liverpool to collect all the pilotage rates. The earnings of each boat have been paid over to him as the collector and afterwards divided in certain agreed proportions among the persons working the same, after deducting a percentage of 1½ per cent. per annum as provided by the Mersey Docks Consolidation Act, 1858, to keep up the annuity fund. Under the bill the pilotage rates will not go through the hands of the collector at all, but will be paid by the owners of the vessels to the Mersey board. The petitioner has held the office of collector for more than forty years, and has been paid by a commission upon the gross receipts from pilotage rates. He has been in the habit of making returns of his receipts and any other information required of him to the board; these duties in relation to the board are of a statutory nature, and he is entitled to be heard upon the question of their abolition by the bill. By

section 142 of the Act of 1858, separate accounts are to be kept by the board of all moneys received by them in connection with the pilot service, and by section 146 it is provided that in order to keep up the pilot annuity fund the collector of pilot rates (who is the petitioner) shall set aside a sum of $1\frac{1}{2}$ per cent. out of the gross earnings of the rates on pilotage. Under another section he is to make quarterly reports, and also certain Board of Trade returns, in all of which matters he is under the control and supervision of the Mersey harbour board. The Referees have decided three cases of a similar character, viz., *Glasgow (Municipal Extensions) Bill, on the Petition of Angus Turner* (2 Clifford & Stephens, 227); *Wigan Improvement Bill, on the Petition of Ralph Darlington and Others* (1 Clifford & Rickards, 126); and the *Great Northern Railway (Ireland) Bill, on the Petition of B. L. Fearnley and Others* (2 Clifford & Rickards, 176), but there were different circumstances in those cases which distinguish them from this, as in the present instance the petitioner has statutory duties under the Mersey Docks Act, 1858, in connection with the board, which are affected by the bill.

Mr. RICKARDS: The question turns not so much upon his duties as the tenure upon which he holds his office.

Pope, Q.C. (for promoters): The petitioner is simply appointed by the pilots and can at any time be dismissed by them, subject to the usual notice.

The CHAIRMAN: We cannot distinguish the petitioner's case from the previous cases. His *locus standi* must be *Disallowed*.

Agents for Petitioner, *Field, Roscoe & Co.*

Petition of (2) THE LONDON AND NORTH-WESTERN RAILWAY COMPANY.

Docks and Harbour Board—Acquisition of Pilot Boats, and Control of Pilotage Service—Pilot Rate—Board not to be Liable for Negligence of Pilots—Railway Company as Owners of Docks—Competition—Claim for Compensation from Board for act of Pilots in their Service—Quantum of Injury.

A railway company, as owners of docks, petitioned against a bill authorising a docks and harbour board to acquire all the pilot vessels, to take into their own hands the entire control of the pilotage service of the port of Liverpool, and, *inter alia*, to fix the

rate for pilotage. The petitioners objected that it would enable the promoters to show a preference to vessels using the promoters' docks, and thus place their own at a disadvantage as competitors, as well as deter vessels from entering their docks by the imposition of a heavy rate. It was explained that the rate would be the same for all vessels entering the port, to whatever docks they might go, and that the rate was one applicable to the port generally without reference to docks at all. The petitioners also claimed to be heard against a clause exempting the board from liability for acts of negligence committed by the pilots in their service. The injury to be apprehended, however, appeared to be of a remote character:

Held, that the petitioners were not entitled upon any ground to be heard against the bill.

The *locus standi* of the petitioners was objected to, because (1) they do not now pay nor will they, if the bill passes, be liable to pay pilotage rates, and they have not nor do they represent any such interest in the pilotage service of the port of Liverpool as entitles them to be heard according to practice; (2) they claim to be heard against the bill only in respect of their ownership of docks at Garston and at Widnes, but their interest (if any) in the pilotage service of the port of Liverpool in respect of such ownership is too remote to entitle them to be heard; (3) the apprehensions of the petitioners as set forth in allegations 6 and 7 of the petition are too vague and remote to form a ground of *locus standi*; (4) the bill will in no way alter the position of the petitioners with respect to the pilotage service of the port of Liverpool; (5) the bill does not contain any provision affecting the petitioners, nor does the petition allege that they have any such interest in its objects and provisions as to entitle them to be heard according to practice.

Ledgard (for petitioners): The bill provides (clause 3, and those following) that the board may purchase and hold licensed pilot boats; by clause 11, they may acquire vessels for pilotage service; by clause 13, so soon as the board shall have acquired and taken possession of all the boats or vessels for the time being licensed under the Mersey Docks Consolidation Act, 1858, for the pilotage service, a rate, to be called the pilot boat rate, may be made, and shall be paid to the board for every vessel entering or leaving

the port of Liverpool, which may be liable for such entering or leaving to pay pilotage rates ; and clause 14 defines the amount of the pilot boat rate. We object to the imposition of that new pilotage rate, and seek to be heard in respect of it. The bill further provides by clause 20, that no pilot may use any boat not belonging to or hired from the board, and by clause 22, "that the board may exercise all or any of the powers of the intended Act without becoming liable in any respect for the acts, neglects, or defaults of any pilot when engaged in pilotage duties." We are owners of extensive docks at Garston and at Widnes, both on the river Mersey, between which docks and the Liverpool and Birkenhead docks there is a keen competition. Our docks feed our railway system with some of our heaviest traffic. The monopoly of pilotage control placed by the bill in the hands of the promoters will injuriously affect the shipping frequenting our docks. In any event we ask that vessels frequenting and using our docks may with respect to pilotage service be placed at an equal advantage with those using the docks of the board. We also ask to be heard against clause 22, which will deprive us of our present remedy at law against the owners of pilot boats in case of injury to our docks, and we submit that as by the bill the board will virtually become the masters of the pilots, the board should become liable for the acts or defaults of their servants.

Pope, Q.C. (for promoters): The petitioners are not owners of ships, but owners of docks, and there is no pilot rate levied on vessels going to one dock or the other, but it is levied generally on all vessels going to the port of Liverpool, and would affect vessels coming to our docks equally with those going to their docks. With regard to clause 22, the injury done to docks by vessels that are taken into them is practically nil, and at any rate is not of sufficiently frequent occurrence to make the withdrawal of a remedy against the owners of pilot vessels, beyond the pilots actually in charge, a ground of *locus standi*.

The CHAIRMAN: We think the London and North-Western Railway Company are not entitled to a *locus standi*. We do not think they will be injured, or at all events the injury is so problematical as not to entitle them to a *locus standi*.

Agent for Bill, *Rees*.

Agent for Petitioners, *Roberts*.

METROPOLITAN DISTRICT RAILWAY BILL.

Petition of THE COMMISSIONERS OF PUBLIC BATHS AND WASHHOUSES IN THE PARISH OF ST. GEORGE, HANOVER SQUARE.

21st February, 1881.—(Before Mr. PEMBERTON, M.P., Chairman ; Sir DRUMMOND-WOLFF, M.P. ; Mr. HINDE-PALMER, M.P. ; Mr. PARKER, M.P. ; Sir JOHN DUCKWORTH ; Mr. RICKARDS ; and Mr. BONHAM-CARTER.)

Underground Railway—Power to Make Ventilators into Street—Trustees of Public Baths and Washhouses—Adjoining Owners—Injurious Affecting—Vibration—Nuisance—Underpinning Clause—Legal Remedy—Brand v. Hammersmith and City Railway Company, L.R. 4, H.L. 171.

An underground railway, whose line had been in working for some years, sought additional powers by the bill, *inter alia*, for constructing ventilators by means of shafts between their tunnel and the streets. The petitioners were the trustees of certain public baths and washhouses, and one of the proposed ventilators was situated close to their baths. They complained that they would be subjected to (1) structural damage by the construction of the works ; (2) additional vibration arising from the withdrawal of solid material between their baths and the railway ; (3) nuisance to their customers from the emission of smoke and steam close to their building. They also claimed a *locus standi* against an underpinning clause contained in the bill. They gave as an additional reason for being heard that they had no legal remedy for injury from vibration (*Brand v. Hammersmith and City Railway Company*), and cited similar cases in which the *locus standi* of petitioners had been allowed by the Court. It was answered on behalf of the promoters that as to (1), structural damage from construction of works, the petitioners would have a legal remedy which would not be affected by the bill ; that (2) no additional vibration could arise from the construction of the works authorised by the bill, and that the question of

against the Act that authorised the construction of the railway. The washhouses were in their present position before the railway was made. No vibration could be caused by the existence or use of the ventilating shaft authorised by the bill. As to the underpinning clause, besides providing that due notice shall be given to the owner, it contains the following provision:—"That the company shall be liable to compensate the owner, lessee, and occupier of every such house or building for any inconvenience, loss, or damage which may result to them by reason of the exercise of the powers granted by this enactment."

Mr. HINDE-PALMER: Supposing in the course of their excavations the company come too near the walls of the baths, so as to endanger them and cause the water to break through, the Court of Chancery would grant an injunction to restrain the execution of the works in that manner, notwithstanding their Act of Parliament.

The CHAIRMAN: The petitioners only show a conjectural injury for which, if it does arise, they have a legal remedy. The case of the *North British Railway (No. 2) Bill* (2 Clifford & Rickards, 54), is conclusive against their claim to be heard, and their *locus standi* must be *Disallowed*.

Agents for Bill, *Dyson & Co.*

Agents for Petitioners, *Capron & Co.*

MIDLAND RAILWAY BILL.

Petition of THE GREAT NORTHERN RAILWAY COMPANY.

28th February, 1881.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE - PALMER, M.P.; Mr. PARKER, M.P.; Sir JOHN DUCKWORTH; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Railway Amalgamation—Third Company using portion of Railway to be Amalgamated—Competition—No Statutory Right interfered with—No Alteration of Status—Saving of Rights and Obligations as to Third Parties—Railways Clauses Act, 1863.

A railway amalgamation bill was opposed by a third company on the ground that it would place the amalgamating company on more favourable terms as regards competition with them, and also on the ground that the bill did not preserve certain rights of user which they enjoyed under the pro-

visions of the incorporating Act of the railway now proposed to be absorbed. The petitioners could at present run over a portion of the railway proposed to be acquired up to the Keighley junction, and thus compete with the promoters for traffic between Keighley and another terminus common to themselves and the promoters, and they complained that if the bill passed their traffic would be treated less favourably by the promoters. This right of user they enjoyed under a section of a special Act which the bill did not re-enact. It was pointed out that they had no rights of user except in common with other companies; that it was not necessary that the provision referred to should be re-enacted in the bill, as by the incorporation of the Railways Clauses Act, 1863, with the bill, all duties and obligations of the company to be amalgamated would be transferred intact to the amalgamating company; and that the *status* of the petitioners would remain unaltered:

Held, that the petitioners had no ground for a *locus standi* against the bill.

The *locus standi* of the petitioners was objected to, because (1) the fact that they are, as alleged in paragraph 3 of the petition, seeking power to make a new point of junction with the Keighley and Worth valley railway does not constitute any ground upon which the petitioners are entitled to be heard against the bill; (2) there is no provision in the bill incompatible with the obtaining by the petitioners of the said powers referred to, if Parliament should think fit to grant the same; (3) there is no provision in the bill whereby the agreement referred to in paragraph 4 of the petition, or the 39th or 40th section of the Act of 1862 referred to in the same paragraph are repealed, altered, or varied, or so affected as to entitle the petitioners to be heard against the bill; (4) the petitioners have not any such estate, right, or interest in the Keighley and Worth valley railway, or in the traffic referred to in paragraph 5 of the petition as entitles them to be heard against the bill, nor if they have any such right, &c., is it in any way affected; (5) if the suggestion contained in paragraph 6 of the petition of a possible diversion of traffic were well founded, which the promoters do not admit, it would not

entitle the petitioners to be heard; (6) the petition does not allege or disclose any ground upon which the petitioners are entitled to be heard according to practice.

Pope, Q.C. (for petitioners): The bill provides for the amalgamation of the Keighley and Worth valley railway with the Midland railway. As soon as our branch line between Thornton and Keighley, now in process of construction, is completed, we shall be in direct competition with the Midland railway between Bradford and Keighley. That new branch line forms a junction with and uses a portion of the Worth railway into Keighley junction, and we are this year before Parliament with a bill for making a junction at another point near Keighley with the Worth railway. As long as the Worth railway is in independent hands our traffic from Bradford to Keighley will be on equally favourable terms with the Midland traffic, but when the Worth railway becomes Midland property that will no longer be the case. The Worth railway was constructed under an Act passed in 1862; and scheduled to and confirmed by that Act was an agreement for working by the Midland company, but section 40 of that Act provides as follows:—"The before-mentioned heads of agreement between the company and the Midland company shall not in any manner alter, affect, increase or diminish any of the tolls, rates, or charges, which those companies shall for the time being be respectively authorised and entitled to demand and receive from any person or from any other company, but all other persons and companies shall notwithstanding such agreement be entitled to the use and benefit of the Worth valley railway upon the same terms and conditions and on payment of the same tolls, rates, and charges, as they would have been in case such agreement had not been entered into." Hitherto, we have been using the Worth railway under the powers of this section, as a separate company's line. There is nothing in the bill to keep alive this section. At any rate we claim the insertion in the bill of powers to allow us to use any portion of the Worth railway upon terms, if not agreed upon, to be settled by arbitration.

Venables, Q.C. (for promoters): Clause 40 of the Act of 1862 would be kept alive in the absence of any express re-enactment of it. It would require very distinct legislation to destroy those rights. The bill incorporates the Railways Clauses Act, 1863, which contains a general saving of rights and claims, notwithstanding amalgamation. The Great Northern company have no rights reserved under that section other than those of any other persons or companies. They have no power to make any agreement with the Worth

company, but are simply allowed to use a portion of the line on payment of the usual tolls. That right they will still have in common with other companies, when the line is Midland property. All liabilities and duties now vested in the Worth company will be transferred to the Midland company by the incorporation of the Railways Clauses Act, 1863, with the bill. For the last twenty years we have had the absolute control and maintenance of the Worth valley railway, and the Referees have decided that the working and maintaining company is the company that represents the interest of the undertaking. *Alcester and Stratford-on-Avon Bill* (2 Clifford & Stephens, 127). Under the *Great Northern Bill*, which they are promoting this session, they will be at liberty to make good their case for altering this point of junction with the Worth valley railway near Keighley, exactly the same as if it remained nominally in the hands of the independent company. The only change made by the bill is in the financial relations between the Midland and Worth valley company, and this in no way affects third parties.

The CHAIRMAN: The *locus standi* of the Petitioners is *Disallowed*.

Agents for Bill, *Beale & Co.*

Agents for Petitioners, *Barr, Nelson & Barr.*

MILFORD HAVEN DOCK AND RAILWAY BILL.

Petition of THE GREAT WESTERN RAILWAY COMPANY.

21st February, 1881.—(Before Mr. PEMBERTON, M.P., Chairman; Sir HENRY DRUMMOND WOLFF, M.P.; Mr. HINDE-PALMER, M.P.; Mr. PARKER, M.P.; Sir JOHN DUCKWORTH; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Dock and Railway Undertaking—Lease of, to Private Firm of Contractors—Railway Company with Running Powers over Promoters' Railway—As Shareholders in Competitive Docks.

The bill authorised the lease of a dock and railway undertaking to a private firm of contractors, and the petitioners were a railway company who had statutory running powers over the railway which formed part of the subject of the lease. The railway in question also formed the access to other docks in process of construction, to which

the petitioners had subscribed largely. They complained that it would be to the interest of the lessees to develop the traffic to the dock to be leased to them under the bill at the expense of traffic passing to the new docks, and objected on general grounds to the transfer of a railway, over which they had running powers, to private individuals. The bill, however, made no alteration in the petitioners' existing running powers over the railway in question :

Held, that the petitioners were not entitled to a *locus standi*.

The *locus standi* of the petitioners was objected to, because (1) the petition does not allege nor is it the fact that any lands, buildings, or property of the petitioners will be taken under the powers of the bill; (2) no works are proposed to be constructed; (3) no power is sought by the bill to prejudice or interfere with any right, power, or authority (if any) possessed by the petitioners; (4) there is no provision in the bill enabling the promoters or Messrs. Lake & Co., to interfere with or divert the traffic from or to the Milford docks, or enabling Messrs. Lake & Co. to exercise any powers with respect to the promoters' undertaking other than the powers already vested in the promoters by statute; (5) the allegations and complaints of the petitioners are only complaints of the mode in which the powers already vested in the promoters may be exercised. The promoters do not admit the truth of any of such allegations, but even if they were true, the bill in no way alters or interferes with the Acts of Parliament affecting the Milford Haven dock and railway company in relation to the several matters so alleged or complained of or of any or either of them; (6) the petition discloses no ground for a hearing according to practice.

Saunders, Q.C. (for petitioners): The bill is one for authorising the Milford Haven dock and railway company to lease and sell their railway and pier undertaking, and for other purposes. One of the enactments of the bill confirms an agreement, which is contained in a schedule, authorising the lease of the company's undertaking, i.e., the dock and railway, to a firm of railway contractors, Messrs. Lake & Taylor. The bill, as originally introduced, gave the contractors, the lessees, the option of purchase for £70,000. This option of purchase has since been struck out of the bill, but we equally claim a *locus standi* against the provision for

effecting a lease. The company's railway is a short line in extension of another short railway called the Milford railway, which we work in perpetuity. Our own railway runs to Milford Haven, and there effects a junction with the Milford railway, which is four miles in length, and runs from Milford Haven to Milford town and harbour. The promoters' railway commences by a junction at Milford with the Milford railway, and extends for a mile and a half to Milford dock. By section 74 of the Milford Haven Dock and Railway Act, 1860, we, as a company lawfully working and using the Milford railway, obtained running powers over the promoters' railway, they in return having reciprocal running powers conferred upon them by the same Act for running over the Milford railway up to the point of its junction with our railway at Milford Haven. Under this section we enjoy at present perfect access to the existing Milford dock over the promoters' railway. Our great interest however in having the free use of the company's railway for our traffic is that there is at the present time a large commercial dock in process of construction in the estuary immediately adjoining Milford, the sole access to which will be over a portion of the company's railway. This dock is being made for the purpose of developing an important traffic in merchandise with America, and it is of the utmost importance to us that we should have free access to it. We are also largely interested in this commercial dock from the fact that we have subscribed heavily towards it. Although there may be, as stated in the 4th objection, no provision in the bill enabling the lessees of the company's undertaking to interfere with or divert the traffic from or to the new dock, it will be Messrs. Lake and Taylor's interest to develop traffic to the company's existing dock, which forms part of the undertaking to be leased to them, at the expense of traffic to the new dock. There is another reason why, as long as the company's undertaking remains in their own hands, proper facilities should be given to traffic going to the new dock, and that is that the company's shares are largely owned by the National Provident institution, who are much interested in the prosperity of the town of Milford, and are owners of the lands upon which the new dock is being constructed. On the other hand we are fostering the new dock undertaking for the purpose of competition with the promoters' existing dock, which will now be favourably treated at our expense by the lessees. This is not like the case of a transfer to another company, but it is a transfer to private individuals, who may die or become bankrupt.

O'Hara (for promoters) was not heard.

GERMAN: We are of opinion that the s are not entitled to a *locus standi*.

or Bill, Jordan.

or Petitioners, Mains.

POTTERIES, SHREWSBURY, AND NORTH WALES RAILWAY BILL.

in of J. L. VAUGHAN AND OTHERS.

uary, 1881.—(Before Mr. PEMBERTON, Chairman; Mr. PARKER, M.P.; Mr. PALMER, M.P.; Sir JOHN DUCKWORTH; KARDS; and Mr. BONHAM-CARTER.)

Undertaking—Powers to sell to any y without distinction—Bill promoted d Parties—Promoters as Debenture -Petitioners as Ordinary Shareholders : of, to be heard—Representation— life Meeting—S. O. 62-66 [Meetings of ors in cases of Bills affecting Incorpo- mpanies]—S. O. 131, 132 [In what issenting Shareholders to be heard]— ies Clauses Act, 1845, section 70— ial Traders—Petitioner as party to an nt with Company—Insufficiency of Clause—Alteration in legal Status by

uthorised the sale of a railway to any any, without specification or distinc- who might be willing to purchase it he approval of the Court of Chancery, ie subsequent dissolution of the exist- mpany. The bill was promoted, not , company itself, but by certain third s, who were stated to be a financial ation interested as debenture holders company, and having a seat on the of direction; and section 4 of the bill vered a moiety of the debenture s to sell the undertaking. The peti- s were a small number of individuals, etitioned respectively (1) as ordinary olders; (2) as traders injuriously ed by the bill; and (3) in the case of etitioner, as party to an agreement would be nullified by certain pro- s of the bill. On behalf of the peti- s as (1) ordinary shareholders, it was ided that the doctrine of representa- id not apply, where the bill was pro-

moted by third parties; that (2) as traders having incurred heavy expenses in con- necting certain mineral quarries and works with the railway, they were entitled to be heard against the sale of an undertaking authorised by Act of Parliament for public purposes, to unascertained purchasers; (3) that in the case of the petitioner who was a party to an agreement for valuable consideration with the company, he was entitled to be heard, inasmuch as the saving clause did not preserve such obligations on behalf of the company:

Held, that the petitioners were (in accordance with the doctrine of representation), not entitled as shareholders to be heard against the bill, their right being sufficiently guarded by section 70 of the Companies Clauses Act, 1845, which was incorporated with the special Acts of the company, and also by the provisions of S. O. 62-66; that (2) as traders their interests were not injuriously affected in such a manner as to entitle them to be heard; but in the case of (3) the petitioner, who was party to an agreement with the company, that his legal status in relation to the company was so affected as to entitle him to be heard against the clause (7) of the bill, which provided for the preservation or extinction of the existing obligations and liabilities of the company.

The *locus standi* of the petitioners was objected to, because (1) John Lingard Vaughan is the only petitioner who is a *bond fide* share- holder; (2) the interests of John Lingard Vaughan, and those (if any) of the other peti- tioners claiming to be heard as shareholders, if affected, are not distinguishable from the interests of the general body of shareholders, and the said petitioners have no right to be heard on behalf of the shareholders; (3) Humphrey Parnell Blackmore, Frederick Edwin Lewis, and Richard Samuel France have, as owners, lessees, and otherwise, of mineral pro- perties and quarries adjacent to the railway, no such interest as entitles them to be heard against the provisions of the bill, and their position is in no way affected thereby; (4 and 5) the petitioners are not affected by the bill, and allege no such ground of complaint against, and no such interest in, the subject-matter of the

bill as to entitle them to be heard according to practice.

Ledgard (for petitioners): The bill is one for authorising the sale of the Potteries, Shrewsbury, and North Wales railway company's undertaking to any company. As alleged in our petition, the preamble recites that the tolls of the company have for some time past been received by a receiver who has been obliged to devote the total receipts to keeping up a service of trains, without being able to devote any of such sums to the repair of permanent way, bridges, &c., and that accordingly, it being found impossible to execute certain repairs deemed necessary by the Board of Trade, the railway was closed to traffic on the 22nd June, 1880, by order of the directors, and has since remained so. The preamble then declares that it is expedient, inasmuch as no interest has been paid upon any of the company's debenture stocks created by special Acts, that the company should be sold and the assets distributed among the persons legally entitled thereto, and that the affairs of the company should be wound-up by the Court of Chancery, and the company dissolved, and the bill accordingly provides for the sale of the company's entire undertaking to any company whatever without distinction. The petitioners embrace three classes as it were, claiming to be heard in three capacities, against the sale of the railway to any company. The petitioners, Messrs. Vaughan and Blackmore, claim a *locus standi* as (1) shareholders of the company; as regards three of the petitioners they claim to be heard as (2) traders; as regards another petitioner, Mr. France, he claims to be heard as (3) a party to an agreement, which will be nullified by the bill. With regard to the case of (1) Messrs. Vaughan and Blackmore, who are ordinary shareholders, the bill is brought in to benefit one class of shareholders only, namely, debenture holders, and the bill is not promoted by the company itself. The parties who promote it are the London Financial association, who are interested as debenture holders, but who happen to be directors of the company. With regard to the second objection, no doubt under S. O. 131, 132, where shareholders petition against a bill, they are not entitled to be heard unless the interests of such shareholders are affected by the bill, and are distinguishable from the rights of other shareholders of the same class.

Mr. RICKARDS: That assumes that the company are promoters of the bill.

Ledgard: That is the case where a bill is brought in by an incorporated company under S. O. 62. Neither S. O. 62 nor S. O. 132 apply to this case.

The CHAIRMAN: The bill being promoted by a third party, must it not be considered as a proceeding taken against your company, and if one shareholder can appear, every shareholder would have a right to be heard?

Ledgard: That would be so. Every shareholder in the company has his individual interests equally invaded without notice. The company does not itself petition, and the shareholders are therefore left to their own remedy. If the bill had been promoted by the company we should have had an opportunity of assenting or dissenting, which we have not now had.

The CHAIRMAN: Where an action is brought against a company or proceedings in Parliament are taken as against a company, it appears to me that each individual shareholder has no *locus standi*, and that the persons in this case to represent the company are the company itself.

Ledgard: Here the company take no action, and the bill would, if we are excluded, pass unopposed. The doctrine of representation can only apply to a case where the shareholders are bound by the majority at a meeting. The company, in cases of representation, must be taken to mean the majority of shareholders after a meeting duly convened. Here they would sell the railway without any meeting having been held. Section 4 of the bill empowers a moiety of the debenture holders, as distinguished from ordinary shareholders, to sell as if it were a limited company registered under the Companies Clauses Act, 1863.

Mr. RICKARDS: They must first get the consent of Parliament to do so.

Ledgard: With regard to class (2) of the petitioners, namely, traders, the petition alleges that Messrs. Blackmore, Lewis, and France are respectively largely interested as owners, lessees, and otherwise in the working and development of extensive mineral properties and quarries on and near the line of railway, which forms their only communication. The arbitrary withdrawal of through rates, and the subsequent closing of the line, have been almost ruinous to them, and they are prepared to show that there was no necessity for any of these steps being taken. Their trade gives them a great interest in the maintenance of the railway, and they ask that it should not be sold at all, but, if Parliament decides that it should, that it may be sold to a solvent company capable of working it efficiently, and that we should have a voice in settling the terms of sale. Our case is similar to that of the *North-Eastern (Additional Powers) Bill, Petition of Bolckow, Vaughan & Co., (1 Clifford & Rickards, 107)*. In that case it was held that, though the petitioners did not represent a class of traders,

they had a sufficient grievance to be heard against the abandonment of the line. We are three traders, who have had the use of the line, and we have been put to the expense of constructing works to connect with the line.

The CHAIRMAN: In the case cited the bill was promoted by the company abandoning the line.

Ledgard: The petitioners' claim to be heard is not affected by the question of who are the promoters of the bill. If anything, our case would be stronger against a third party. Then upon the claim (3) of Mr. France to be heard, not only as a trader; but as having an agreement, which would be put an end to by the bill, the petition alleges that the effect of clause 7, in its present shape, will be to repeal and render null and void an existing agreement between the company and the petitioner. The agreement is dated 22nd January, 1872, and upon the faith of it the petitioner has expended large sums of money. It sets forth that there were certain outstanding accounts between the petitioner and the company, and then declares that in consideration of his continuing lessee of certain quarries and at his own cost maintaining a certain incline, which connects the quarries with the railway, he should be entitled to the perpetual use of the incline and be allowed to work it in connection with the railway. By clause 7 of the bill it is provided "from and after the payment of the purchase-money, and the execution of the deed of conveyance, which conveyance the liquidator is hereby empowered to execute, the undertaking shall be vested in the purchaser, subject to all the obligations and liabilities of the company under the recited Act with respect to the maintenance, repair, management, regulation, working, and use of the undertaking or any part thereof, and the traffic thereon, but freed and by this Act absolutely discharged from all other contracts, agreements, debts, liabilities, and engagements of the company, whether directly affecting the undertaking or affecting the company in respect of the same, except such contracts, agreements, debts, liabilities and engagements as have been entered into or incurred by the company for land." The promoters under this section take power to do away with all obligations except those under their recited Acts, which does not include our agreement. Therefore as the bill now stands, this agreement, which was entered into for valid consideration, will be absolutely put an end to as soon as the purchase is completed and the undertaking transferred to the purchaser. This involves such an alteration in the legal status of the petitioner as to entitle him to a *locus standi*.

Batten (for promoters): The promoters of this

bill are people to whom £500,000 has been owing for fifteen years, and no interest has been paid. The line is already closed. The ordinary shareholders have refused to subscribe anything towards reopening it. The question of representation of shareholders by their company is not affected by the parties by whom a bill dealing with the company is promoted. Section 70 of the Companies Clauses Act, 1863, which is incorporated in every special Act, provides that twenty or more shareholders may require directors to call extraordinary meetings, and on failure of the directors to do so, that the shareholders may themselves call a meeting. The petitioners have put themselves out of Court by failing to take the necessary steps. Failing such action, however, no harm can be inflicted upon the shareholders by their not being heard in Committee, because when the bill has passed one House, it must by S. O. 64, before it goes to the other House, go before a Wharcliffe meeting, at which one-fourth of the shareholders can stop the bill.

The CHAIRMAN: The Court are of opinion that the petitioners have no right to appear *quâ* shareholders.

Batten: With regard to the claim of the petitioners to be heard as traders, they have not shown that they will be injuriously affected by the bill, which as it now stands enables the undertaking to be sold to a solvent company, who will be able to re-open it again to the benefit of traders and the public generally. With regard to (3) the claim of Mr. France to be heard in respect of his agreement with the company, clause 7 preserves all statutory agreements. Either it is a legal agreement or it is not. If it is a legal agreement it is preserved; if it is *ultra vires*, then it is an agreement which has no right to be preserved.

The CHAIRMAN: We *Disallow* the *locus standi* so far as the Petitioners are shareholders claiming to represent the company; and we *Disallow* it so far as regards their claim to be heard as traders. We *Allow* it only in the case of the Petitioner, Mr. France, with reference to the agreement as against clause 7.

Agents for Bill, *Sherwood & Co.*

Agent for Petitioners, *Bell.*

ST. HELEN'S AND DISTRICT TRAMWAYS BILL.

Petition of THE CORPORATION OF ST. HELEN'S.

16th March, 1881.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE-PALMER, M.P.; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Tramway—Extension of Time Bill—Corporation—Road Authority—Contract between Company and Corporation embodied in previous Act—Alleged interference with, by Extension of Time—Time not of essence of Statutory Contract between Parties, but fixed by Parliament—Complaint against Past Legislation—No alteration in status of Petitioners—S. O. 158 [Penalty to be imposed unless line opened].

A corporation petitioned against a bill for extending the time for the completion of tramways within their borough, (1) as the road authority, (2) as parties to a contract between themselves and the tramway company, embodied in the promoters' Act of incorporation, which they alleged would be affected injuriously by the bill. The petitioners alleged that the period limited by Act of incorporation for the completion of the promoters' works was inserted at their instance, and as a condition precedent to their assenting to the construction of tramways in the district:

Held, however, in accordance with a previous decision, that the time prescribed by the former Act for the completion of works was not of the essence of the contract as between the promoters and the corporation as third parties, but was a condition imposed by Parliament upon the company, there being nothing in the clause of the former Act relied upon by the petitioners to rebut this presumption; that the complaint of the petitioners was one against former legislation; that their position both as regards the contract embodied in the cited clause of the former Act, and as the road authority, was not affected by the bill; and that they were therefore not entitled to be heard.

The *locus standi* of the petitioners was objected to, because (1) no lands, &c., of theirs will

be taken or interfered with, nor any rights, powers, or privileges prejudicially affected by the bill; (2) the petition does not allege, nor is it the fact that the petitioners or the inhabitants of the borough of St. Helen's will be injuriously affected by the bill; (3) the bill confers no powers on the promoters of breaking up or otherwise interfering with any roads or streets within the jurisdiction and under the control of the petitioners; (4) the petitioners do not specify the nature of the clauses and provisions which they require inserted in the bill for their protection, nor the nature of any injury which they apprehend; (5) the powers granted by the St. Helen's and District Tramways Act, 1879, for the construction of the works thereby authorised, are limited by restrictions (to a great extent inserted at the instance of the petitioners), and such restrictions constitute the conditions on which Parliament granted and the promoters undertook their powers and duties, and it is neither just nor consistent with practice that, on an application for an extension of time for the completion of works already authorised by Parliament, restrictions with respect to those works should be imposed on promoters, unless these arise necessarily under the extension of time; (6) the petition does not allege that the extension of time constitutes the grievance of the petitioners, but, on the contrary, that their grievances (if any) are in respect of an alleged undertaking given by the promoters to them to complete the tramways within the time limited by the said Act of 1879, and to join the petitioners in purchasing property for street improvements. It is not the fact that the promoters gave any undertaking as alleged; (7) the petition discloses no ground for a hearing according to practice.

Salisbury (for petitioners): The bill authorises an extension of time for carrying out the powers of an Act of 1879, which was an Act for incorporating the St. Helen's and district tramways company, and for empowering them to construct tramways in the borough and district of St. Helen's. Before that Act was obtained by the promoters there were three companies desirous of obtaining similar powers in our borough, and it was necessary before the promoters brought their bill before Parliament, that they should obtain our consent as the road authority. We assented to their bill upon certain terms, one of which was that they were to complete their works within two years, a condition embodied in the bill. Another consideration upon which the promoters obtained our consent was that, inasmuch as it was necessary that certain property situate in our borough and referred to in section 37 of their Act should be

ired before the tramway could be laid, the promoters, i.e., the tramway company, should join the corporation in purchasing property.

RICKARDS: Was there any agreement between the company and the corporation other than the consent required by the Standing Orders?

Isbury: There was originally an informal agreement signed by them, but afterwards formal notices were drawn up and put into their Act. The notices, which the tramway company had to insert for the bill, did not cover this portion of the scheme, but to carry out the arrangement entered into with the corporation, they gave notices and applied for power to insert additional provisions. Under that power they inserted clause 37 into the Act of 1879, enabling the corporation to purchase the said property, and the tramway company to contribute half of the purchase-money, and in order to guarantee payment of this moiety, clause 30 was inserted in the bill requiring that £20,000 of £1 should be issued, and one half paid up before any works were commenced. They did not fulfilled the obligation to contribute of the purchase-money specified by clause 30 of the Act of 1879, or laid any of the said tramway, and they now ask for an extension of time of two years, one year being the statutory extension as provided by S. O. 158.

RICKARDS: The period of extension of time will be reduced to one year in accordance with S. O. 158 before the bill is allowed to pass.

Isbury: Any extension of time is contrary to our understanding with them, which was that the works were to be completed within two years, and embodied in their Act of 1879. Our agreement in stipulating, as a condition of our giving, that they should contribute to the purchase of this property, was to carry out a scheme of improvement, which we should have been enabled to do within the period limited for the construction of works, viz., two years. It is, therefore, in direct contravention of the conditions upon which we assented to their Act of 1879. Independently, however, of the question of contract between us and the promoters, we have a right to be heard on the question of extension of time. (*Edinburgh Street Tramways Bill*, 1 Clifford & Rickards, 16.) We are not damaged by the extension of time as the promoters have no authority, inasmuch as whilst the powers of the tramway company as to the roads are hanging over our heads, practically we must deal with the roads as we otherwise would. **Isbury (for promoters):** The petition contains

no allegation that if the bill were to pass in its present form, the corporation or inhabitants of St. Helen's would be injuriously affected. The period limited by the Company's Act of 1879 was the period fixed by Parliament, and not the result of contract between the promoters and third parties, and there is nothing in that Act to show that the period of completion was the result of agreement between the parties. (*Romford Canal Bill*, 2 Clifford & Rickards, 305.) The subscription towards the purchase of the property referred to, was a condition to be carried out before the opening of the tramway no doubt, as it was indeed necessary that that property should be purchased before the company could lay its rails over it, but time was not of the essence of the agreement embodied in clause 37 of the Act of 1879 for that contribution by the company.

The **CHAIRMAN:** If it was part of the agreement that time was of the essence of the contract, would it not have followed that the time within which the corporation was to have bought the property should also have been limited?

O'Hara: No doubt. The 37th clause, however, imports no condition as to time. It provides:

"And whereas it has been agreed between the corporation and the company that certain lands, buildings, and property within the borough shall, as soon as possible, hereafter be purchased by the corporation, at such times and upon such terms and conditions as they may think fit, for the purpose of widening and improving certain roads within the borough in which the tramways proposed by this Act are to be laid, and that such purchase shall be made by the corporation, both for the convenient working of the tramways authorised by this Act, and also for the convenience of the public; and that the cost of the same, and of the road improvements connected therewith, shall be borne in equal shares by the corporation and the company: Therefore, the company shall pay to the corporation, out of the capital to be raised under the powers of this Act, one-half of the purchase-money paid by the corporation for such lands, buildings, and property, together with one-half of the costs of such purchase, and of taking down all buildings so purchased, and of widening and improving the roads aforesaid, and the roads so widened and improved shall vest in the corporation, and for ever afterwards be left open to the public."

This clause embodies all the contract subsisting between the parties, and they are absolutely bound by it. The complaint of the petitioners is, in fact, a complaint against past legislation, and the way in which we have fulfilled our

obligations under a former Act, not against anything contained in the bill. The position and rights of the corporation, and our obligations and liabilities towards them under the Act of 1879 will be entirely unaffected by an extension of time. Our obligation to contribute towards the purchase of this property by the corporation will remain unaltered by the bill. Injury to their position as the road authority is not alleged in the petition, and if it were would be no ground of *locus standi* against an extension of time bill. (*Metropolitan District Railway Bill*, 1 Clifford & Stephens, 5; *Belgravia and South Kensington New Road Bill*, *Ib.* 27.)

The CHAIRMAN: We do not think the corporation are in any way affected by the bill, and their *locus standi* must be *Disallowed*.

Agents for Bill, *Lewin & Gregory*.

Agents for Petitioners, *Sherwood & Co.*

SKIPTON AND KETTLEWELL RAILWAY (EXTENSION TO AYSGARTH) BILL.

Petition of JOHN NORCLIFFE PRESTON.

9th March, 1881. — (*Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE-PALMER, M.P.; Sir JOHN DUCKWORTH; Mr. RICKARDS; and Mr. BONHAM-CARTER.*)

Railway Extension—Additional Powers—Former Act—Withdrawal of Opposition to, by Landowner—Non-fulfilment of Conditions of Withdrawal—Alleged Mala Fides—Agreement between Parties not Affected by Bill.

Practice—Court will not enquire into alleged breach of faith unless arising under Bill—Breach of Privilege.

A landowner petitioned to be heard against a bill for conferring additional powers upon a railway company, upon the ground that they had been guilty of a breach of faith towards him in the non-fulfilment of an agreement. The agreement had been made at the time of the passing of the company's former Act, on condition of the petitioner withdrawing from opposition to it, and involved certain concessions to him which he alleged had not been carried out. He therefore claimed to go before a committee to object to further powers being granted to promoters, who had been guilty of *mala fides* towards

him; but it was not contended that any breach of faith would result from the present bill:

Held, that the Court could only enquire into the question of how far the petitioner was injuriously affected by the present bill, and not into alleged misconduct on behalf of the promoters in relation to other matters; that the question of a breach of faith could only be considered when resulting from some provision of the bill; and that as the agreement between the promoters and the petitioner was not proposed to be set aside or altered by the bill, the petitioner was not entitled to be heard.

A point being raised in argument that the promoters had been guilty of a breach of privilege of Parliament:

Held, that that was a question for the House itself to decide, and not within the cognizance of the Court.

The *locus standi* of the petitioner was objected to, because (1 and 2) no lands, &c., of his are proposed to be taken by the bill, which in no way affects him; (3) it is true, as alleged, that in the session of 1880, a bill for authorising a railway from Skipton to Kettlewell was introduced, which the petitioner first opposed, and that upon certain terms set forth in his petition, he withdrew his opposition and the bill was passed, but the bill in no way affects the agreement set forth in the petition or the petitioner's rights or interest under such agreement, nor does the petitioner allege the contrary; (4) paragraphs 17 and 20 of the petition allege certain admissions on the part of the promoters, which the promoters deny, but even if true such admissions do not entitle the petitioner to a *locus standi*; (5) the petitioner is not entitled to be heard according to practice.

Balfour Browne (for petitioners): The petitioner claims to be heard against the bill on the ground that the promoters have committed a breach of faith towards him.

The CHAIRMAN: Is the breach of faith committed under the provisions of this bill?

Browne: No: the circumstances are these. Last year the promoters obtained their Act for the construction of a line, a portion of which passed through the petitioner's property. It was originally intended to carry it very near his house, and he presented a petition against it. In consequence of his opposition and as a condition of his withdrawing it, the promoters,

through Mr. Langdale, the solicitor to the company, and one of the directors, made an agreement with the petitioner that the line should be deviated in a certain way so as to pass a certain distance from the petitioner's house, and also that they should compensate him for residential damage, the amount to be fixed by an arbitrator, as well as for damage by severance, and should pay him £300 for his costs. The bill then passed as an unopposed bill, so that in a sense Parliament was indirectly a party to this agreement, and the deviation of the line was adopted by the promoters at the instance of the petitioner. None of the terms of the agreement having been fulfilled, the present bill must be regarded as a slight upon the Parliamentary sanction to the former Act, if not as a breach of privilege.

Mr. PARKER: With regard to the deviation line, was it the intention, when the agreement was executed, that the promoters should come again to Parliament for power to make that deviation?

Bozall (for promoters): The deviation being upon the petitioner's own land, and by consent, and within the powers of the special Acts, there was no necessity for coming to Parliament.

The CHAIRMAN: The bill does not propose any alteration in the terms of that agreement.

Balfour Browne: Our contention would be that Parliament should not grant further powers to parties who have acted dishonestly in carrying out the terms of their agreement.

The CHAIRMAN: We cannot entertain the question of whether the promoters have acted honestly or dishonestly. We are not a Court for any other purpose than to decide whether the provisions of the bill will injuriously affect the parties claiming to be heard.

Browne: We have no legal remedy against the company, for the company's seal has never been attached to this agreement. Our only remedy would be against Mr. Langdale. In the *Glasgow Corporation (Municipal Extensions) Bill* (2 Clifford & Stephens, 224), the question of the authenticity of signatures to a certain petition was entertained as being a question of breach of privilege of Parliament. This is a similar case.

Mr. RICKARDS: Where there is a question of breach of privilege, it must be brought before the House by petition. I do not see that we can look to anything beyond the present bill. The question is, whether there is anything in the bill injuriously affecting the interest or existing status of the petitioner.

Browne: We ought to be allowed to state to a committee the dishonest manner in which we have been treated by the promoters as a ground

for their being refused further Parliamentary powers.

The CHAIRMAN: That would be rather a question for the House upon the second reading of the bill. The function of the committee would rather be to settle the details of the measure, unless specially directed by the House to inquire into an alleged breach of privilege. Our duty in cases of alleged breach of faith would be to inquire whether such breach would be the effect of the bill. We must confine ourselves in this case to ascertaining whether the petitioner is *prima facie* injuriously affected by the bill.

Bozall (in reply): There has been no fraud or breach of faith committed by the promoters towards the petitioners. Under our agreement with him three things were to be done, (1) a deviation of the line was to be made; (2) the seal of the company was to be affixed to the agreement, which would make the company liable instead of the promoters; and (3) £300 was to be paid to Captain Preston for his costs. None of these things have yet been done, as the railway is not yet completed, and the company has not yet got a seal of its own. They will all be carried out in due time, and the bill makes no alteration in the company's obligation to carry out the agreement in full.

The CHAIRMAN: The *locus standi* of the Petitioner is *Disallowed*.

Agents for Bill, Wyatt, Hoskins & Hooker.

Agent for Petitioner, Sudlow.

SOUTH-EASTERN RAILWAY BILL.

Petition of (1) THE SEVENOAKS LOCAL BOARD; (2) TONBRIDGE LOCAL BOARD AND TRADERS AND MERCHANTS OF TONBRIDGE AND NEIGHBOURHOOD.

14th March, 1881.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. PARKER, M.P.; Sir JOHN DUCKWORTH; and Mr. RICKARDS.)

Railway Amalgamation—Local Authority—S. O. 134 [Municipal Authorities and Inhabitants of Towns]—Traders and Merchants—Claim to revise Rates—Report of Joint Committee on Railway Amalgamation in 1872—No alteration of existing Rates—Absence of Allegations of specific Injury arising from Amalgamation—Practice.

The bill authorised the transfer to a railway company of four small railways, which were already worked in perpetuity under

an agreement by the amalgamating company. The petitioners were the local authorities for districts traversed by the railways to be amalgamated, and they claimed to be heard against the amalgamation in order to advocate a revision of the rates and charges of the promoting company. The petitioners did not allege any specific injury to their districts which would arise from the bill, but claimed a right to be heard against the amalgamation, in accordance with the latitude granted to petitioners in such cases. The bill did not propose any alteration in the existing rates charged upon the promoters' railway, and enacted that no higher rates should be charged upon the railways proposed to be amalgamated than those already authorised by their special Acts:

Held, that under these circumstances, and in the absence of any allegation of specific injury arising under the provisions of the bill, the petitioners were not entitled to be heard.

The petition of one of the local authorities against the bill was signed by a number of traders and merchants in the district. The petition, however, did not allege any specific injury arising from the bill, but merely complained of the existing rates upon the promoters' railway, which were not in any way affected by the bill:

Held, that the *locus standi* of these petitioners must also be *Disallowed*.

The *locus standi* of (1) the Sevenoaks local board was objected to, because (1) the petition does not allege or show that the town and district of Sevenoaks will be injuriously affected by the bill; (2) the injury to the town and district of Sevenoaks alleged by the petitioners is not of such a nature as to entitle them to be heard; (3) the petition does not allege or show that the town and district of Sevenoaks will be injuriously affected within the meaning of S. O. 134; (4) the South-Eastern railway company are not, within the meaning of the S. O. applying for any powers to amalgamate with other companies; (5) the petitioners have no such interest in the objects and provisions of the bill as to entitle them to be heard against it. The *locus standi* of (2) the Tonbridge local board, &c., was objected to on similar grounds.

Pembroke Stephens (for petitioners (1)): The petitioners on behalf of their district allege that they have long been aggrieved by the exorbitantly high fares charged by the South-Eastern railway company for passenger traffic to many places on their system, and the petition contains comparative tables of the fares charged by the company in comparison with those charged upon other railways. The bill is an amalgamation bill, for it proposes to transfer the undertakings of four other railway companies to the South-Eastern company, namely, the Westerham Valley, the Hundred of Hoo, the Loose Valley, and the West Wickham and Hayes railways. These railways have not all physical connection with Sevenoaks, but they are on all sides of the town. Amalgamation bills have always been regarded as affording a proper opportunity for a revision of the tolls, fares, rates, and charges of companies seeking to amalgamate. This right of revision of rates and charges has been recognised by Parliament in the case of local authorities as well as the right to set the Railway Commissioners in motion (*South Eastern, and London Brighton and South Coast Railway Companies Bill*, 1868, 1 Clifford & Stephens, 149.) Our claim to be heard against an amalgamation bill is also supported by the report of the joint committee of the Lords and Commons on railway amalgamations in 1872. That committee in recognising the interest of local authorities in railway matters, recommended that in the event of branch railways being wanted and refused by the existing companies, power should be given to local authorities to make them, or to guarantee the existing companies a moderate return on the necessary capital, in which case the companies should be bound to construct them. That principle has been acted upon in Ireland. As far back as 1846 a committee of the Commons recommended that upon amalgamation the maximum tolls be revised, and the joint committee of 1872 point out "that Parliament in granting such powers (i.e. amalgamation) has a perfect right to insist on fresh conditions in favour of the public," and among them they name "immediate reduction of rates and fares." The committee then point out the necessity of a frequent revision of rates according to circumstances, and they add, "Care should be taken that traders and other persons interested are not prevented by any rules of *locus standi* from appearing and arguing their case before committees on the bills." I crave in aid of the petitioners' claim to be heard as the local authority these recommendations of the joint committee of 1872.

Mr. RICKARDS: The report of the joint com-

is merely a recommendation to Parliament which was not practically adopted by the House of Commons, and therefore has no obligatory force.

CHAIRMAN: Do you claim to be heard under S.O. 134?

MR. RICKARDS: We rely upon S.O. 134 as a recognition of the principle we contend for.

CHAIRMAN: Are the lines of the company proposed to be amalgamated open?

MR. RICKARDS (for promoters): One of them may be closed under the existing Acts they are to be taken over by the South-Eastern company in perpetuity. Under this bill they will be taken over as part of the South-Eastern railway.

CHAIRMAN: Have local authorities ever objected against an amalgamation bill?

MR. RICKARDS: Scotch corporations are always heard in such cases, and the corporation of London was heard against the *South-Eastern Railway Bill* in 1868.

MR. RICKARDS: In all such cases there has been a distinct allegation that the amalgamation would work injuriously to the petitioners. In this case the petitioners do not allege that the amalgamation will work to their disadvantage. They only object to the rates of the South-Eastern company as

MR. RICKARDS: It may be that there is nothing in that affects us, but the proposed amalgamation is for the benefit of the South-Eastern company, and will give them a firmer footing in the district, and in accordance with the principles of parliamentary practice, we are heard on such an occasion to reconsider exorbitant rates charged by the company in their district.

MR. RICKARDS: By clause 35, the South-Eastern company are not to take higher rates than are authorised under the Acts of the companies to be amalgamated.

MR. RICKARDS (for petitioners (2)): I pray in aid the case of *Mr. Stephens* has addressed to the House. Our case has this additional element, the petition is signed by traders and merchants as well as the local authority of Tonbridge. Traders have a right to be heard in amalgamation bills in respect of rates, and local authorities might be excluded.

MR. RICKARDS: The ground of *locus standi* is of *status*. Traders have been allowed to be heard against amalgamation bills, where the objection has been that the traders would be affected by the amalgamation itself.

CHAIRMAN: Where the allegation has been that the fares would be raised by the

amalgamation, or that traders would have less facilities in forwarding their traffic.

BIRON: Traders are affected by an amalgamation, as it tends to shut up a district and create a monopoly, and so destroy healthy competition.

MR. RICKARDS: In this case the lines to be amalgamated are already worked in perpetuity under agreement by the South-Eastern company, and the rates to be charged after amalgamation are to be the same as those now authorised on the existing lines to be amalgamated. The competition will not be affected in this case.

BIRON: Traders were heard against the *London and North-Western, and Whitehaven, Cleator, and Egremont Railway Companies Bill*, 1877 (2 Clifford & Rickards, 34).

MR. RICKARDS: In that case the specific result to follow from the amalgamation itself was alleged. The petition in this case does not contain any such allegation.

The CHAIRMAN: The *locus standi* of all the Petitioners must be *Disallowed*.

Agents for Bill, *Stevens & Mortimer*.

Agents for Petitioners (1), *Sherwood & Co.*

Agent for Petitioners (2), *Clabon*.

SOUTH METROPOLITAN GAS BILL.

Petition of THE METROPOLITAN BOARD OF WORKS.

21st March, 1881.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. PARKER, M.P.; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Metropolitan Board of Works—Local Authority—S. O. 134 A.

Michael, Q.C. (on behalf of the promoters) conceded the petitioners a *locus standi* against the bill, but submitted that they ought to be restricted to the bill itself, and not be allowed to travel into matters raised by their petition, which were outside the bill.

BIDDER, Q.C. (on behalf of the petitioners): contended that a general *locus standi* having been conceded to him, he should be allowed to go before the committee with that general *locus standi*, it being for the committee to restrict him from going into anything that to them might seem irrelevant.

The CHAIRMAN, after some discussion, stated that a proposition was going to be made to the House to enlarge the terms of the S. O. admitting the local authority to be heard in cases of this kind, and if the S. O.

was so amended it might probably cover this case, in which state of things it would not be necessary for the Referees to hear it. Under those circumstances it would be better to let the case stand over—it being understood that if the S. O. was not amended as anticipated the case would come on before the Referees.

Upon the passing by the House of S. O. 184 A the objections to the *locus standi* of the petitioners were subsequently withdrawn.

Agent for Bill, *Brown*.

Agents for Petitioners, *Dyson & Co.*

STALYBRIDGE EXTENSION AND IMPROVEMENT BILL.

Petition of THE LOCAL BOARD FOR THE DISTRICT OF MOSSLEY.

2nd March, 1881.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE-PALMER, M.P.; Mr. PARKER, M.P.; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Municipal Borough — Extension of Limits — Provisional Order and Private Bill—Competing Schemes under—Rival Jurisdiction over same area sought by two Local Authorities—Bona fides of Application for Provisional Order—Practice — Woking Water and Gas Bill, [infra, p. 114] cited.

A corporation promoted a bill *inter alia* for extending the limits of the borough. The local board of a neighbouring district petitioned against the bill on the ground that they had themselves applied to the Local Government board for a Provisional Order extending their own limits, and that such Provisional Order would, if granted, confer upon them jurisdiction over a portion of the same area as that sought to be included by the promoters within the limits of the bill. The promoters admitted on the authority of the *Woking Water and Gas Bill* [*infra*, p. 114] that if the petitioners were *bona fide* seeking under a Provisional Order to include the same area within their district, they would be entitled to be heard, but pointed out that in the present case the petitioners had not applied for a Provisional Order until after the notice for

the bill had been given. It appeared, however, that a meeting had been held in the petitioners' district to consider the question some time previously, and that steps had been taken to proceed with the application to the Local Government board: *Held*, that the *onus* of disproving the *bona fides* of the petitioners' application for a Provisional Order rested with the promoters, and that under the circumstances of the case the petitioners were entitled to a *locus standi*, unless their application for a Provisional Order should be refused previously to the consideration of the bill by a committee.

(*Semhle.*) Parties who have applied for a Provisional Order are entitled to a *locus standi* against a bill for a competing scheme, if the application has been *bona fide* and not merely for purposes of *locus standi*, conditionally only upon such application not being actually refused before the hearing of the bill in committee.

Note.—In this case the Local Government board stayed the proceedings with reference to the Provisional Order until after the consideration of the bill, and made their decision depend upon that of the committee on the bill.

The *locus standi* of the petitioners was objected to, because (1) paragraphs 1 and 2 of the petition contains only statements of facts; (2) the promoters deny that the inhabitants of the district of Mossley and property therein will be injuriously affected by the passing of the bill, or that the petitioners as the local authority of the district are entitled to be heard against the bill; (3) the presentation of the petition to the local government board, mentioned in paragraph 4, if it be not a mere device for obtaining some appearance of interest in the subject matter of the bill, does not itself entitle the petitioners to be heard; (4) the bill will not affect the diversion of sewage mentioned in paragraph 5, and the promoters deny that the petitioners possess any drainage grounds or any rights therein of which they will be deprived by the bill. The bill is promoted by the corporation of Stalybridge with the assent of the local board of Stalybridge, and the petitioners have no such interest in the subject matter of the bill as entitles them to be heard on their petition according to practice.

the latter provision, or the proposed use of steam or mechanical power upon a tramway, would entitle a railway company to be heard against the bill on the ground of competition, the Court held that the alleged competition, even if arising between two railway companies, instead of, as in the present case, between a railway and a tramway company, would not be sufficient to entitle the petitioners to be heard :

Held, however, on the question of interference with bridges, that, inasmuch as they were the property of and maintainable by the railway companies, the petitioners were entitled to be heard against a clause of the bill authorising physical interference with them by the construction and working of the tramways.

An objection to the *locus standi* of the petitioners was lodged on behalf of the promoters, on the ground that the petitioners had already procured protective clauses to be inserted in the bill at the inquiry held upon the Provisional Order before the Board of Trade : *Held*, that proceedings before the Board of Trade did not affect the rights of petitioners to be heard before a Committee.

The *locus standi* of the petitioning railway companies was objected to, on similar grounds, viz., because (1) no lands, works or other property of the petitioners will be taken, used, or injuriously affected under the provisions of the Order. The tramways are merely proposed to be laid down in and along streets and roads which are vested in the proper authorities, and with which the petitioners have nothing to do, and all risk of damage to or interference with any bridges of the petitioners is effectually guarded against by the provisions of the Order; (2) at the instance of the petitioners themselves clauses for their protection and benefit were inserted, while the draft order was before the Board of Trade, and the petitioners cannot now be heard to oppose the authorisation of the proposed tramways; (3) the petitioners as railway companies cannot be heard according to practice to allege or complain of competition at the hands of a tramway company, and no such competition will, in fact, be caused by the Order as entitles them to a hearing; (4) the allegations of the petitioners as to the possible use of steam or mechanical power upon the tramways are inaccurate and misleading. The tramways

stop considerably short of Manchester and Tottington, and no powers by agreement or otherwise are sought over the tramways of the Manchester carriage and tramways company, which in any event are not steam tramways, and none of the railway lines of communication mentioned in the petitions have the same terminal points as the tramways. In respect of the possible and limited use of mechanical power, the promoters are under the Order made subject to various restrictions in their nature inconsistent with competition, and not similarly applicable to the railways of the petitioners; (5) it is not alleged that the petitioners are frontagers within the meaning of the S. O. applicable in that behalf; (6) no sufficient ground is alleged to entitle the petitioners to be heard according to practice.

Ledgard (for the Lancashire and Yorkshire railway company): We claim the right to be heard in respect of interference with our bridges, and on the ground of competition aggravated by the power taken to employ steam power. We allege that the proposed tramways, numbered respectively, 3, 5, and 17 are intended to be laid down upon bridges, which carry public roads or streets over your petitioners' railways, canal and works, and that they will endanger the stability of the bridges and otherwise prejudicially interfere therewith. Although the surface of the roads over these bridges does not belong to us, but is vested in the road authority, the structure of the bridge belongs to us, and the abutments stand upon our land. We apprehend structural damage from the passing of the tramcars over the bridges, which are kept in repair by us, as well as danger to traffic passing along our railways and canals. Clause 24 of the bill provides that the carriages used on the tramways may be moved by steam power, or any mechanical power, and we apprehend increased danger to the stability of our bridges from the use of such motive power. We are clearly entitled to be heard on any question that may affect the stability of the bridges. (*Brentford, Isleworth, & Twickenham Tramways Bill*, 2 Clifford & Rickards, 139.)

The CHAIRMAN: You apprehend that it will cost you more to keep up these bridges?

Ledgard: Yes, and also that their stability will be imperilled. The second objection points to the fact that, when we were before the Board of Trade, clauses were inserted for our protection. That does not, according to practice, estop us from opposing the confirmation of the Order by Parliament.

Mr. RICKARDS: You need not trouble yourself further upon that. Opponents before the Board

ciency of Allegations of Petition—Alleged Depreciation of Value of Property—Land as Building Sites.

The owner of land abutting upon roads, along which it was proposed to construct a tramway, petitioned against the bill for confirming the Provisional Order authorising its construction. At some points along the proposed route the land was already built upon, and at others it was eligible and intended for building purposes. The petition alleged depreciation in the value of the petitioner's property abutting upon the line of the tramways, but it did not contain any distinct allegation that the petitioner was the owner of any "houses, shops, or warehouses," abutting upon the tramways. It was contended that S. O. 135, under which the petitioner claimed to be heard as a frontager, did not apply to cases in which an "owner" was not also the "occupier" of premises so situate. The Court (after expressing a doubt as to the sufficiency of the allegations of the petition) refused to entertain the question of whether the petitioner was a frontager within the meaning of S. O. 135, with regard to his ownership of land intended for building purposes, but *Held* that he was entitled to be heard as an "owner" within the meaning of the S. O., in respect of property already built upon, which abutted on the roads traversed by the proposed tramways.

The *locus standi* of the petitioner was objected to, because (1) his petition does not allege that any of his lands, houses, or property, can be taken, used, or injuriously affected under the provisions of the Order; (2) the several roads and streets in and near the town of Bury referred to in the petition are not his property or under his control, but that of the public authorities, whose consent has been duly obtained, and by agreement with whom suitable provisions in that behalf have been inserted in the Order; (3) the allegations in the petition fail to disclose or suggest any injury whatever to the petitioner other than a possible injury to him or his property as one of the public, in which capacity (even if the fact were so) he has no right according to practice to be heard upon

his sole and separate petition. Such apprehensions of future injury as are shadowed forth in the petition are altogether of too vague a character to afford a ground of *locus standi*; (4) the petition does not allege any injury actual or possible to the petitioner or his property as a frontager, or that he is in fact a frontager within the meaning of the Standing Orders; (5) the petition alleges no ground for a hearing according to practice.

Clerk, Q.C. (for petitioners): The petition alleges that the petitioner is the owner of nearly the whole of the land abutting on the several roads and streets, through which the proposed tramway will pass. A great portion of the land is built upon, and occupied as dwelling houses and shops, and the remainder is eligible as valuable building sites. We then allege that the streets are narrow and ill-adapted for tramways, the construction of which will tend to depreciate the petitioner's property by diminishing the facilities of access to it, both by vehicles, carts, and waggons, and will injuriously affect such portions thereof as are used for shops, because traffic of all kinds (except that conveyed in the cars) avoids, as far as possible, the streets and roads in which tramways are laid. It will also depreciate the value of the building sites belonging to the petitioner.

The CHAIRMAN: The petitioner claims to be heard as a frontager. Is he owner of houses, shops, or warehouses?

Clerk: Yes. The words of S. O. 135 are "owner or occupier." The petitioner is the owner of the land on which these houses are built, and he falls within that S. O. as the owner of premises abutting upon the street to be interfered with.

Mr. RICKARDS: The S. O. goes on to say "and who alleges against a bill or Provisional Order that the construction or use of the tramway proposed to be authorised thereby will injuriously affect him in the use or enjoyment of his premises, or in the conduct of his trade or business." Does he allege that?

Clerk: He alleges depreciation in the value of his property by the obstruction of traffic, and the withdrawal of business from such of the houses as are shops, as well as depreciation in the value of building sites. That is an injurious affecting of the use and enjoyment of the property by the petitioner. In the case of the *Brentford and Isleworth Tramway Bill* (2 Clifford & Rickards, 140), owners were allowed a *locus standi*, and against the *Metropolitan District Railway Bill, 1879* (2 Clifford & Rickards, 197), owners of property who sought to be heard on the ground that the access to their premises would be stopped up, were heard.

Clerk, Q.C. (for the London and South-Western Railway Company): The promoters propose a double line of tramways along the Waterloo-road in front of the entrances to and exits from our Waterloo terminal station; and we allege that the construction and working of these tramways would most seriously obstruct and interfere with the ingress and egress of carriages, cabs, and other vehicles to and from the station, and would be productive of danger and risk to persons using our station, especially as it is approached by an incline from the Waterloo-road. The promoters object that we do not bring ourselves within the S. O. It is true we do not use the words of the S. O.; but it has been held that this is not necessary, if equivalent words are inserted in the petition.

Clifford (for promoters): We rely also on the clause inserted for your protection.

Clerk: It is not enough to prevent your cars from stopping in front of our station. We object to the tramway there altogether. The mere passing of the tram-cars when there is a great flow of traffic arriving at or leaving the station will cause obstruction and danger. Our right as frontagers is established by the decision in the *Norwich Tramways Bill* (2 Clifford & Rickards, 210).

Clifford (in reply): The allegations in the railway company's petition point rather to interference with the roadway than to injury as frontagers; and interference with the roadway is a matter for the road authority.

Mr. RICKARDS: The petitioners allege that the tramway would interfere with the ingress and egress of vehicles, and such an obstruction at their station might materially affect the receipts of the company.

The CHAIRMAN: Where one of two railways would take a man to the same place, he might choose the one whose terminal station was free from the obstruction of a tramway.

Clifford: If, in the opinion of the Court, the petitioners sufficiently allege that they will be injuriously affected in the use and enjoyment of their premises, the next question is whether they show such a *prima facie* case of injury as entitles them to a *locus standi*. It has been held that the injury apprehended by petitioners must be of a substantial character. Here the railway company will be adequately protected by the clause inserted at the instance of the Board of Trade.

Mr. RICKARDS: The proposed clause is only a mitigation of the evil, not a removal of it.

The CHAIRMAN: The S. O. says the petitioners shall be heard on their petition as frontagers; and assuming that they make the necessary allegations of injury, they are en-

titled to go before the committee and say that your clause does not adequately protect them.

Clifford: The petitioners make many general allegations affecting preamble, and their *locus standi* must at all events be limited to the injury they may sustain as frontagers.

Locus Standi Allowed under S. O. 135.

Agents for Petitioners, *Bircham & Co.*

Petition of (2) THE LONDON TRAMWAYS COMPANY.

Tramway, physical Interference with, by Projected New Line—Tramway crossing Existing Line—Junction with Proposed Line of third Tramway Company—Obstruction to Traffic of Petitioning Company, caused by.

A metropolitan tramway was projected crossing an existing line of the London tramway company, and making a junction with a line proposed by the South London company in a bill then pending. The London company petitioned on the ground of physical interference, and a limited *locus standi* on this ground was conceded to them. They also sought to be heard on the ground that the junction with the proposed line of the South London company would take effect in St. George's-circus, where many tramways converged, and would bring across their tramway so much additional traffic as to obstruct the proper working of their line:

Held, that the junction proposed by the promoters with a line of a third company as yet unauthorised, did not afford any sufficient ground of *locus standi* to the petitioning company.

The *locus standi* of the London tramways company was objected to, because (1) no lands, property, rights, or interests of the petitioners will be injuriously affected; (2) the petitioners are not frontagers; (3) they have no monopoly or exclusive right of user of the streets in which their tramways are laid, and have no property in any portion of the roadway of such streets, but only possess an easement along the same for the purpose of maintaining and working their tramways subject to the rights of the rest of the public, and have therefore no right to be heard against the crossing of their lines; (4) the petitioners are not entitled to oppose the

an equally favourable position for concluding an agreement with them as if the railway remained, as at the present time, in independent hands. The promoters urged that the petitioners had at present no railway communication with Rickmansworth, their bill not having been yet before Parliament, and that the present bill effected no change in the existing *status* of the petitioners. The case involved very special circumstances, and the Court disallowed the *locus standi* of the petitioners.

The *locus standi* of the petitioners was objected to, because (1) no rights, interests, or property of the petitioners will be taken or interfered with under the bill; (2) the bill is a bill to vest the undertaking of the Watford and Rickmansworth railway company (hereinafter called "the Watford company") in the London and North-Western railway company (hereinafter called "the North-Western company") and the allegations contained in the petition to the effect that the petitioners have a bill now pending in Parliament under the short title of the Great Western Railway Bill, by which it is proposed, *inter alia*, to authorise them to construct a railway from their Uxbridge branch railway to Rickmansworth, and that such railway is intended to join the railway of the promoters at Rickmansworth, and that provisions are contained in the bill of the petitioners to authorize them on the one hand, or the Watford, and the North-Western company, or either of them, on the other hand, to enter into and carry into effect agreements with reference to the working, maintenance, management, and use of so much of the Watford railway as lies between the point of junction with that railway of the railway intended to be constructed by the petitioners and the station at Rickmansworth, including that station, and with respect to the regulation, management, and transmission of traffic on or beyond the Watford railway, and the railway of the North-Western company respectively, and the railways of the petitioners, and the collection, division, appointment, appropriation, and distribution of the tolls, rates and charges arising in respect of any such traffic, and that the petitioners may use the aforesaid portion of railway, and the said station at Rickmansworth, form no ground on which the petitioners are entitled to be heard against the bill; (3) the allegations contained in the petition with reference to the connection of the petitioners with another and separate company called the

Uxbridge and Rickmansworth railway company, with which the promoters have not and never had any concern, forms no ground to entitle the petitioners to be heard against the bill; (4) no alteration is proposed to be made by the bill with respect to the relative positions of the petitioners and of the North-Western company in the Rickmansworth district, as they existed at the time when the agreement dated 17th March, 1863, and referred to in the petition, was entered into between the petitioners and the North-Western company, and nothing is contained in the bill which affects the existing relative positions of those two companies; (5) no new competition will be created between the petitioners and the North-Western company or the promoters under the powers of the bill; (6) the Watford railway has for many years been worked by the North-Western company under an agreement for the working thereof in perpetuity, and the fact that it is sought by the bill to vest the Watford railway in the North-Western company is not such an alteration of circumstances as to entitle the petitioners to be heard against the bill; (7) the petitioners have shown no grounds, and in fact none exist, entitling them according to precedent and the practice of Parliament to be heard against the bill.

Venables, Q.C. (for petitioners): The bill is one for the amalgamation of the Watford and Rickmansworth railway with the London and North-Western railway, and we claim the ordinary *locus standi* of a competing company against an amalgamation bill, but our principal claim is founded upon the fact that we are ourselves promoting a bill this session for a railway between Uxbridge, to which point we already run, and Rickmansworth, in which bill we take power to agree either with the North-Western company, or with the Watford and Rickmansworth company, on the assumption that it remains independent, for the use of the station at Rickmansworth, as well as for the use of a portion of the Watford company's line into Rickmansworth. If the Watford company had remained independent we should have been in a much better position to get favourable terms for the use of the portion of line and station, than if it becomes part of the London and North-Western company's system, with which we are in competition over a great part of England and Wales.

Pope, Q.C. (for promoters): The Great Western company have not yet got their bill for a railway from Uxbridge to Rickmansworth, and may not get it, and their bill and the present bill are not competing schemes. They are not at the present time at Rickmansworth at all. Even if their bill was a competing bill with ours, and

so, and the petitioners also instituted proceedings with a view of establishing their right to do so; but after fully hearing the case, the Master of the Rolls decided that the petitioners had no power to supply gas within the limits of the bill, and granted a perpetual injunction to restrain them from doing so, and from that decision the petitioners have not appealed, and the time for appealing has expired; (3) even if the limits of supply of the petitioners included the whole or any part of the limits of the bill (and the decision of the Master of the Rolls has, as the promoters contend, authoritatively determined they do not), the petitioners would have no right to be heard against the bill on the ground of competition inasmuch, as although their Act passed so far back as 1824, they have never yet supplied gas within such limits; (4) no property, right, or interest of the petitioners will be taken or prejudicially affected under the powers of the bill, and the petitioners have not any such interest in the objects of the bill as, according to the practice of Parliament, entitles them to be heard against it on the grounds specified in their petition.

Balfour Browne (for petitioners): This is an attempt on the part of the promoters to get the Court to reverse a decision given in our favour against the *Westgate and Birchington Gas Bill*, 1879 (2 Clifford & Rickards, 229). The Isle of Thanet gas company was incorporated by an Act of 1824, and the question is whether the words of that Act gave us power to supply gas within the same district, which the Westgate and Birchington gas company seek power to supply by the bill. The Act of 1824 gave us power to supply "the towns of Margate, Ramsgate, and Broadstairs, and the suburbs and vicinity thereof and places adjacent," &c. We say that Westgate and Birchington are places adjacent to Margate, and the Court so held in 1879. The limits of the bill are the same as those of the bill of 1879, including Westgate and Birchington, and against that bill you gave us a *locus standi* on precisely similar grounds. We have at the present time pipes within the limits that the promoters propose to appropriate, and we are supplying a house which would, naturally, be within the limits they propose to take, but they have gone round it. The circumstances are exactly the same as they were in 1879, but they contend that the case stands in a different position to what it did in 1879, because the Master of the Rolls has given a decision restraining us by a perpetual injunction from supplying gas within the limits of the bill, the time for appealing against which has expired. That we deny. The Master of the Rolls gave them an injunction

which prevents us from laying our pipes in a certain piece of the district, but he guarded himself from saying anything about any place outside of that. The order of the Court was as follows, "This Court doth order that the defendants, the Isle of Thanet gas light and coke company, be hereby perpetually restrained, from laying or continuing pipes under, across or along that part of the public road in the pleadings mentioned, running from Margate to Birchington, in the Isle of Thanet, which traverses the plaintiffs' property in the pleadings mentioned, and from allowing any pipes to remain therein or thereunder." The Order then directs the defendants, i.e., the Isle of Thanet gas company to pay the plaintiff, Mr. Davis, the costs of the action, including his costs for the motion for an injunction, but contains no decision as to locality generally. The judgment of the Master of the Rolls applied only to that particular spot. [*The shorthand writer's notes of the case before the Master of the Rolls were here put in.*]

Little, Q.C. (for promoters): Even if they have power to supply gas to certain places within the limits of the bill, they have never exercised them. The bill is promoted by a different promoter to the bill of 1879. The promoter of that bill conceded a limited *locus standi* to the petitioners, which is not the case here.

The CHAIRMAN: Unless you show us that the decision of the Master of the Rolls has affected the decision which the Court came to in 1879, we must follow that decision.

Little: The decision of the Master of the Rolls has determined the interpretation of the petitioners' Act of 1824. The principle upon which it was decided that the Isle of Thanet gas company were not entitled to supply the particular spot referred to in the judgment, because that spot was not adjacent to the places named in the Act of 1824, would apply to the whole of the district claimed by the petitioners, including Westgate and Birchington. Even if the Court felt that it was not bound by the decision of the Master of the Rolls we should contend that they are not entitled to be heard on the ground of competition seeing that by their own admission in the pleadings in that case, they are only supplying 17 houses in this district.

Mr. RICKARDS: If they have power to supply, that would give them a right to be heard on the ground of competition even though they did not supply.

The CHAIRMAN: We think that, in accordance with our decision in the *Westgate and Birchington Gas Bill*, 1879, and the interpretation we then put upon the petitioners' Act of 1824, we ought

board should be empowered to construct and maintain certain outlets, overflow-sewers, drain-pipes, channels, and culverts, &c." And clause 9 enacts, "That it shall be lawful for the local board to construct, maintain, and use as storm outfalls, the outlets, overflow-sewers, drains, pipes, &c., delineated and described in the plans and sections." The petitioner is the owner of mills and a distillery, just below the place where the local board propose, as shown by the plans, to have a storm overflow into the Three Mills Wall river, one of the tributaries of the river Lee. They also propose to make sewers and drains into the Three Mills river, to be used as storm outfalls from the main sewers vested in the local board. Our distillery and warehouses in connection therewith are situate on both banks of the river Lee, just below the point at which the Three Mills Wall river flows into the Lee, and we are the owners of the banks of the Lee at our works. The river Lee is a tidal river, and we are entitled to the use of the tidal water as it ebbs down the river as well as the fresh water which flows down with it, for moving and working our mills. We object to the discharge of the storm overflow water through the sewers, which must bring sewage down with it above our mills, as calculated to interfere with the due working of them. We allege that the bill is directly opposed to and inconsistent with existing legislation now in force, more especially the Lee Conservancy Act, 1868, which provides for the maintenance and purity of the river Lee and its tributaries, and we apprehend pecuniary damage from the difficulty of working our mills which will be caused by the bill. When the sewage is discharged and finds its way into the river Lee it will be taken backwards and forwards to our mills as the tide ebbs and flows. We also apprehend injury from an increase in the quantity of storm water discharged at our mills. The mills are occupied by tenants, and this discharge of foul water would be injurious to them. The dictum of Mr. Rickards in the *Birkenhead, &c., Railway Bill* (1 Clifford & Rickards, 4), and the case of the *West Kent Drainage Bill* (*Ib.* 195), are in my favour.

Michael, Q.C. (in reply): There is no power taken in the bill to construct sewers. That is given to us as the local authority by the Public Health Act, 1875. The enactment in clause 9 of the bill is necessary because we want to use as storm overflow sewers the sewers shown upon the deposited plans, we being at present prevented by the Lee Conservancy Act, 1868, from putting storm water into the river. The Lee conservancy board are themselves petitioning against the bill, and they will be heard.

The petitioner can proceed against us at law for a nuisance caused by the pollution of the river. No practical injury can accrue to the petitioner by passing a little more storm water into the river, as when that is done the river will necessarily be in flood. The petitioner has no private interest in the river Lee which will be affected by the bill.

The CHAIRMAN: The *locus standi* of the Petitioner must be *Allowed*.

Agents for Petitioner, *Nash & Field*.

Petition of (2) THE EAST LONDON WATERWORKS COMPANY.

Drainage Scheme—Local Board as Urban Sanitary Authority—Water Company—Interference with Works of—No new Powers conferred by Bill—Compensation under Public Health Act, 1875.

A water company petitioned against a drainage bill promoted by an urban sanitary authority on account of interference with their property. The promoters proposed, as shown by the deposited plans, to construct a sewer through the embankment of a river, which belonged to the petitioners, for the purposes of their supply, but the point of interference was below the intake of water by the petitioners, and it was not contended that the supply would be affected by it. The promoters pointed out that they were already empowered to make such sewers under the provisions of the Public Health Act, 1875, which provided full compensation for injury done to persons in the position of the petitioners:

Held, that the petitioners were not entitled to a *locus standi*.

The *locus standi* of the petitioners was objected to, because (1) one of the objects of the bill is to empower the promoters to construct, maintain, and use as storm outfalls the outlet overflow-sewers, drains, pipes, channels, culverts and openings delineated in the deposited plans and sections, and to provide thereby for the passage of overflow storm-waters from the main sewers, vested in the promoters, into the river Lee and its tributaries, and into any out-dock, canal, or channel communicating therewith, the provisions of the 91st section of the Lee Conservancy Act, 1868, to the contrary

anding. The promoters, as the local board, have power under the Public Health Act, 1875, to carry any sewer through, across, any turnpike road, or street, or place or intended as a street, or under any vault, which may be under the pavement, or carriage way of any street, after giving reasonable notice in writing to the owner of lands within their district. The Public Health Act, 1875, provides compensation if any damage is done to any person by the exercise of such powers by the local board, and therefore the petitioners are lawfully protected by law. The promoters do not seek power by the bill to acquire property of the petitioners, or to interfere with or carry any sewers through or over their lands; (2) no interference with or obstruction of the supply of water, or with the right of enlarging and improving the supply of water under the powers sought by the bill; (3) no interference with the banks of the waterworks tidal river, which is only affected by the construction of sewers under the powers of the Public Health Act, 1875.

Q.C. (for petitioners): Clause 9 of the bill gives the promoters power to construct and maintain storm outfalls and other works in connection with the deposited plans, the construction of which will interfere with us. We have no power by our Acts to take water from the River Lee, and construct works for a water supply.

The deposited plans show that the proposed sewer will interfere with the banks of the river, which is the waterworks tidal river, and with the waterworks and works there, and we ask for the insertion of clauses to prevent interference and injury to that river and our property, and compensation therefor. They take no notice of the fact that they make a sewer through the waterworks bankment.

MR. JUSTICE: How is the word sewer defined in the Public Health Act?

Q.C. (for petitioners): It includes "drains" of every description. The mere fact that the promoters cannot carry drains under the Public Health Act, 1875, ought not to prevent our going to the Local Board to obtain special protection.

MR. JUSTICE, Q.C. (for promoters): We take no notice of the fact that the proposed sewer goes through the bank of the waterworks tidal river 25 miles below the petitioners' property, as shown on the deposited plans, and that the power to construct and maintain sewers, is given us under the Public Health Act, 1875, which also provides for compensation for injury done by such works to the owners and occupiers. Under the Public Health Act, 1875, an urban sanitary authority may, upon giving notice to owners and occupiers, interfere

in any way they please for the purpose of constructing a sewer, and according to the decision in the case of *Swanston v. The Twickenham Local Board*, L.R. 11 Ch. D., 838, they are not obliged to purchase any land whatever for the construction of any sewer, or pay for any easement; all that they have to do is to pay for any damage caused by the construction of the sewer. It is not contended that we shall pollute the waterworks river, and so injure the supply of water by the petitioners, and that river is under the Lee conservancy board.

The CHAIRMAN: The *locus standi* of the Petitioners is *Disallowed*.

Agents for Petitioners, *Bircham & Co.*

Petition of (3) THE NORTH METROPOLITAN TRAMWAYS COMPANY.

Drainage Scheme—Local Board—Road Authority—Power to Construct Sewers—Tramways Company—Interference with Easement over Roads—Public Health Act, 1875—Tramways Act, 1870—No Interference with Existing Rights of Petitioners.

The bill was also opposed by a tramway company, on the ground that it empowered the promoters to construct sewers under roads along which the petitioners' tramways were laid, and so to interfere with an easement enjoyed by them, without providing any compensation for loss of income occasioned by the consequent suspension of traffic:

Held, that inasmuch as the promoters were already empowered to construct sewers—as complained of by the petitioners—under the provisions of the Public Health Act, 1875, and that by the Tramways Act, 1870, the petitioners only worked their tramways subject to the rights of the road authority, i.e., the promoters, to interfere with the roads, the petitioners were not so affected by the provisions of the bill as to entitle them to be heard against it.

The *locus standi* of the petitioners was objected to, because (1 and 2) their petition does not distinctly specify the grounds on which they object to the provisions of the bill, or that they will be prejudicially affected thereby; (3) their petition misrepresents the facts of the case; (4) the petitioners do not allege that they have

such an interest over the highways mentioned in the bill, as to entitle them to be heard against the bill; (5) they are not the municipal or other authority having the local management of the metropolis, nor are they the inhabitants of any town or district affected by the Bill; (6) they are not the owners and lessees, or reputed owners and lessees, or occupiers of any lands or other property to which the bill relates; (7) the promoters deny that any of the works contemplated by the bill will in any way affect the property, rights, or interests of the petitioners; (8) the allegations of the petition cannot be sustained.

Pembroke Stephens (for petitioners): Clause 9 of the bill empowers the promoters to construct drains, sewers, &c., as shown on the deposited plans. We are a tramway company with tramways already laid down and used along two of the principal roads, under which it is shown by the plans that it is intended to construct sewers. The power to do so is also supplemented by clause 13 of the bill, which enacts, "subject and according to the provisions of this Act, the local board may enter upon, purchase, take and use all or any of the lands, houses, and hereditaments delineated and described in the deposited plans, &c., and any right, easement, or privilege in or over the same." They are therefore empowered to interfere with roads under which we have an easement, and they may cause the suspension of the working of our tramways for any period without being liable to compensate us for loss of income. We claim to be heard to ask for the insertion of clauses for our protection and compensation.

Michael, Q.C. (for promoters): Clause 9 of the bill is quite unnecessary in order to enable us to construct sewers, for we already have that power under the Public Health Act, 1875. That clause and clause 13 were inserted to enable us to acquire lands for other purposes, and use the sewers for other purposes than those for which they are now used, but such powers do not affect the petitioners. Moreover, by a clause in the Tramways Act, 1870, tramways are to be put down subject to the rights which the road authority may have to interfere with the roads. The bill confers no new powers upon us in relation to the tramways company.

The CHAIRMAN: It is not necessary to carry the arguments further. The *locus standi* of the Petitioners is *Disallowed*.

Agents for Bill, *Hillearys & Taylor*.

Agents for Petitioners, *Sherwood & Co.*

WOKING WATER AND GAS BILL

Petition of THE WOKING AND HORSEL LIGHT AND COKE COMPANY.

21st February, 1881.—(Before Mr. PEMBROKE M.P., Chairman; Sir H. DRUMMOND M.P.; Mr. HINDE-PALMER, M.P.; Mr. P. M.P.; Sir JOHN DUCKWORTH; Mr. BICI and Mr. BONHAM-CARTER.)

Gas Companies—Same District of Supply
visional Order and Private Bill—Con
Schemes under—Application for Prov
Order already before Board of Trade-
Inquiry appointed—Conditional l
Practice.

Against a bill for incorporating a company for the supply of water and gas to the Woking and neighbouring places, company, registered under the Companies Act, 1862, petitioned on the ground that they were themselves applying for a Provisional Order authorising them to supply gas within a portion of the same district. The Provisional Order was refused by the Board of Trade, who had fixed a day for holding a local inquiry, and an application was made on behalf of the petitioners to postpone the hearing of the case by the Referees until the decision of the Board of Trade had been made. The Court decided to proceed with the hearing of the case. The promoters objected that until the Provisional Order was granted, there could be no competition between their scheme and that of the petitioners, but the Court decided that the Provisional Order had been refused, and that the petitioners' schemes were competing schemes for the same purposes of *locus standi*, and granted the petitioners a *locus standi* conditionally on their obtaining the Provisional Order from the Board of Trade.

The *locus standi* of the petitioners was refused, because (1) no lands, &c., will be taken or interfered with; (2) the one for supplying gas and water to an entire district at present wholly unsupplied with gas, and the petitioners have applied to the Board of Trade for a Provisional Order, which may

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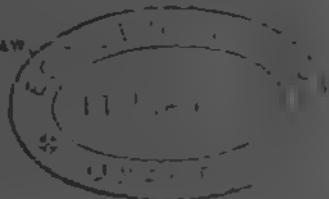
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building up a code of Principles and Practice upon one very important branch of Private Bill Legislation, that of *Locus Standi*. As Chairman of the Court, Mr. PEMBERTON, M.P., also gave expression to the regret of the Referees, upon personal and public grounds, at the loss which the Tribunal was sustaining.

In such a record of the Court and its labours as is furnished by a continuous series of *Locus Standi* Reports, this brief reference to the retirement of one of its permanent members may be justified as of something more than passing interest.

It will be seen by the Reports that Sir GEORGE K. RICKARDS has been succeeded as Counsel to the Speaker, and as Referee, by Sir FRANCIS SAVAGE REILLY, K.C.M.G.

TEMPLE, *March*, 1888.

COURT OF REFEREES IN PARLIAMENT.

REPORTS FOR THE SESSION 1882.

. Where a Standing Order is quoted or referred to, the number is that of the Standing Orders for the Session 1883.

ACCRINGTON CORPORATION TRAMWAYS BILL.

Petition of THE CHURCH DISTRICT LOCAL BOARD.

4th May, 1882.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE-PALMER, M.P.; Mr. PARKER, M.P.; Sir F. S. REILLY; and Mr. BONHAM-CARTER.)

Tramways—Local Authority—District Traversed by Portion of Tramways—Claim for General Locus against whole scheme—Steam Power—S. O. 134 (as to local authorities).

A local authority claimed to be heard generally under S. O. 134 against a bill authorising the construction of a line of tramways, a portion of which would traverse the petitioners' district:

Held, that their *locus standi* must be limited to so much of the bill as authorised the construction of the tramways actually traversing their district, as to which they were entitled to be heard on all questions affecting that district, including the use of steam or mechanical power on the tramways.

The *locus standi* of the petitioners was objected to, because (1) they claim (by paragraph 3 of their petition) to be the local board for the district of Church (which the promoters do not deny) but by paragraphs 4, 6, 7, 8, 10, and 11, they also seek to be heard as to tramways proposed to be authorised by the bill outside the district of Church, and mainly within

the borough of Accrington. Such claim is contrary to practice; (2) they likewise seek (paragraph 9) to turn to account their technical *locus standi* (if any) against the tramways situated in their district indirectly to oppose in their petition two other bills of the present session which they ought to oppose directly if they have a right to be heard against them, which is not the case; (3) their opposition even to the tramways in their own district cannot be regarded as *bond fide*, inasmuch as the petitioners object to tramways traversing the streets of Church as dangerous, and also as failing to form a through communication (*i.e.*, through their district) between Blackburn and Accrington. They also contend that if such tramways were required, they, the local board, would be the proper parties to construct them; but, in fact, the petitioners have given their assent to a scheme of tramways through the streets of Church, which is being promoted by third parties in the present session; (4) they object to the use of steam upon the proposed tramways, but such use is, according to legislation and by the provisions of the bill, subject to the discretion of the Board of Trade, to whom the petitioners can appeal before sanction is given to its use; (5) they are not entitled to be heard against any part of the bill except that relating to the construction of tramways within their own district; (6) save as aforesaid their petition discloses no ground for a hearing according to practice.

Ledgard (for petitioners): The bill authorises the corporation of Accrington to construct certain tramways, and to use steam or other mechanical power for working them. We are the local authority of Church, and the proposed tramways will run for part of their course

through Church. We allege that the tramways proposed by the bill will cause serious inconvenience and interruption of traffic in our district. We claim as a local authority to be heard generally against the proposed tramways under S. O. 134. If we had represented two-thirds of the route proposed to be traversed, we should have had an absolute veto upon the whole scheme. We are not in that position, but are entitled to go before a Committee to raise the whole question. There was a decision adverse to our claim in the *Vale of Clyde Tramways Bill* (2 Clifford & Stephens, 137), but the circumstances there were very different.

The CHAIRMAN: In the case of the *South-Eastern Railway Bill* [*infra*], the Court limited the *locus standi* of the vestries to the particular line or widening in their district.

Bayldon Walker (for promoters): I refer the Court to the case of the *Glasgow and Ibrox Tramway Bill* (2 Clifford & Rickards, 12).

The CHAIRMAN: We think that the petitioners are only entitled under the S. O. to a *locus standi* against so much of the tramway as comes within their district.

Ledgard: That will include the question of use of mechanical power, tolls and all other matters affecting our district. It is difficult to specify particular clauses.

The CHAIRMAN: The petitioners will be heard upon those points and generally against so much of the bill as affects their district.

Agents for Bill, *Walker & Co.*

Agents for Petitioners, *Sherwood & Co.*

ACCRINGTON EXTENSION AND IMPROVEMENT BILL.

Petitions of (1) OWNERS, OCCUPIERS, AND RATEPAYERS OF RISHTON; (2) CLAYTON-LE-MOORS LOCAL BOARD; (3) GREAT HARWOOD LOCAL BOARD.

29th March, 1882.—(Before Mr. HINDE-PALMER, M.P., Chairman; Mr. PARKER, M.P.; Mr. MELDON, M.P.; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Gas and Water Undertaking, purchase of by Municipal Corporation—Permissive Powers to purchase as ground of Locus Standi—Outside Authorities within Limits of Supply Opposing Purchase—Former Legislation sanctioning Purchase by predecessors of Corporation—Proposed extension or modification of existing, how far to be regarded as fresh legislation—Surplus profits,

application of, by gas and water authority—Representation, of Rural Sanitary Authority quoad Township by Ratepayers, &c.—Gasworks Clauses Act, 1847—Waterworks Clauses Act, 1847.

By an Act passed in 1854, constituting the gas and water company of Accrington, power was given to the local board of Accrington to purchase the company's undertaking, and in that event to apply surplus profits in aid of the general district rates of Accrington. In 1863 the company obtained statutory powers to enlarge their limits, by taking in three adjoining townships. Meanwhile Accrington had become a municipal borough, and the corporation now promoted a bill which (among other objects) renewed by clause 206 the permissive powers to purchase already existing, "with all modifications necessary or expedient for adapting the same to the provisions of this Act." The clause further proposed to exclude, after the transfer, the operation of the Gas and Waterworks Clauses Acts, 1847, with regard to capital and profits. The petitioners, who asked that various provisions in their interest should be inserted in the bill, contended that at present the outside townships were entitled to a reduction in the gas and water rates, if the surplus profits of the company exceeded ten per cent.; whereas, by an agreement to which the petitioners would be no parties, and by virtually new legislation, they might be deprived of this protection. On the other hand, the promoters urged that the complaint was really one of existing legislation, and that clause 206 only made it clear that the corporation instead of the local board should be entitled to purchase the undertaking:

Held, that all the petitioners were entitled to a *locus standi* limited to clause 206.

(*Per Cur.*) If promoters insert in a bill what looks like a new power, they do so subject to parties affected by it having a *locus standi*.

The *locus standi* of owners, occupiers, and ratepayers of Rishton was objected to, because (1) the petition complains of the powers con-

tained in clause 206 of the bill authorising the corporation to purchase, and the gas and waterworks company to sell their undertaking, but such powers can only be exercised (if at all) by agreement, and do not in accordance with the practice of Parliament afford a *locus standi* to petitioners; (2) even if the petitioners might otherwise be entitled to be heard against clause 206, similar powers of purchase by the corporation of the undertaking of the gas and waterworks company have been in existence since the year 1854, and the petitioners accordingly are really complaining of former legislation; (3) the petitioners cannot according to the practice of Parliament be heard to ask for provisions or with regard to clauses which are not contained in the bill or covered by the notice for the bill, and accordingly the petitioners can only be heard (if at all) with regard to clause 206; (4) the petitioners make no allegation, and set forth no interest which, according to practice, entitles them to be heard; (5) the petition sets forth that the township of Rishton is within the district of the rural sanitary authority of the union of Blackburn, but the petition does not purport to emanate from such rural sanitary authority, or to have been deposited with the knowledge or concurrence of such authority; (6) the petitioners have no representative or other character entitling them to raise the questions embodied in their petition, or to question the expediency of entrusting the corporation of Accrington with the powers sought for by the bill; (7) as individual consumers of gas or water, or in any other capacity, the petitioners have, according to practice, no sufficient interest entitling them to be heard.

The *locus standi* of the Clayton-le-Moors local board and of the Great Harwood local board was objected to on grounds 1, 2, 3 and 4, as above set forth.

O'Hara (for the three sets of petitioners): The gas and water company of Accrington was constituted by an Act of 1854, and the townships of Rishton, Clayton-le-Moors and Great Harwood were included within the company's gas and water limits by an Act of 1863. The Act of 1854 provided that, in the event of the purchase of the company's undertaking by the local board (now the corporation) of Accrington, the local board should apply all surplus moneys received by them in respect of the supply of gas or water, after satisfying charges of management, interest and sinking fund, "in aid of the general district rates leviable by the local board." And the Act of 1863 provided that that Act, together with the Act of 1854, should have effect and be executed as if they were one Act. The Gasworks Clauses Act, 1847, and

the Waterworks Clauses Act, 1847, were incorporated in the statutes of 1854 and 1863; and if those statutes continued to apply after the purchase now contemplated by the corporation, outside consumers would have the benefit of a reduction in rates when the profits derived from the water or gasworks came to 10 per cent. But the bill expressly provides that, from the date of the sale and purchase, the provisions of the General Acts respecting capital and profits shall no longer apply. This, therefore, is new legislation. We shall by this enactment be deprived of an existing protection; and by virtue of the Act of 1854, all surplus profits will be applied for the benefit of the general district rate of Accrington. No doubt this is to be a voluntary agreement between the corporation and the company; but in entering into that agreement we, who will be seriously affected by it, have no voice. It is not as if we voted for the representative body in Accrington. We are bound by whatever they do, though they do not represent us. The *Birmingham* case is in point (1 Clifford & Rickards, 129 and 143); the only difference being that there the agreement was actually before Parliament, whereas in this case power is sought to make an agreement affecting us, with which as third parties we have nothing to do. As to the objection that the Blackburn sanitary authority should have petitioned, and that Rishton has no representative character, the Blackburn sanitary authority are at present in a state of transition, and Rishton has applied to the local government board to become a local board. In many cases it has been held that a body of ratepayers affected by a gas and water bill have a right to a *locus standi* though the local authority also petitioned, but in this case the local authority do not petition. The Rishton petition is signed by 168 ratepayers, one of whom is the lord of the manor.

Mr. RICKARDS: This is not a case of ratepayers petitioning against the seal of the governing body?

O'Hara: No; the case of the *Chesterfield Borough Improvement Bill* (1 Clifford & Rickards, 211), is on all fours with this.

Pembroke Stephens, Q.C. (in reply): The consequences apprehended by the petitioners, whatever they may be, can only arise if the company consent to sell; and an injury resulting to third parties, as a possible result of agreement between two others, does not constitute a tenable claim to *locus standi*. The Act of 1854 did not provide that, in the event of the sale of the company's undertaking, surplus profits were to go in reduction of rates; they were to be applied in aid of the general district rates

leviable within the Accrington district. If, therefore, the purchase of the undertaking had taken place under that Act, these outside districts would have had nothing to say to it. Nor has the position of the petitioners been altered by the Act of 1863, which extended the area of supply, and provided that the Acts of 1854 and of 1863 were to be read as one. If the undertaking had then been bought up by the local authority, the petitioners would again have had nothing to say. Since then only one thing has happened: the rights, powers and privileges of the local board have passed to the corporation of Accrington, and the corporation, being in Parliament with a bill to extend their boundary and for other purposes, have inserted a clause making it clear that in becoming a corporation, they shall not lose the benefit of the old Acts.

Mr. RICKARDS: Could the Accrington corporation, having now become a corporate body, exercise, with a clause like this, the powers given by the former Act to the local board?

O'Hara: That is a legal question.

Mr. RICKARDS: If you put into a bill what looks like a new power, you do so subject to any party affected by it having a *locus standi*.

Stephens: In the first place we say that no injury is inflicted upon the petitioners, and in the next place, where Acts already existing contain, not merely a permissive power to sell, but supply the machinery for carrying that power into effect, parties in the position of the petitioners are not entitled to a *locus standi*. (*Wigan Improvement Bill*, 1 Clifford & Rickards, 124.) Suppose clause 206 were not in the bill, and we agreed with the Accrington gas and water company to buy their undertaking, what the petitioners now complain of would be done and they would not be able to oppose it.

Mr. RICKARDS: Clause 206 says that sections 60 to 82 of the Company's Act of 1854 shall apply to the undertaking as existing at the date of the purchase and sale.

Stephens: That is, the machinery of existing legislation is lifted into the bill with an addition that the provisions of the Gasworks or of the Waterworks Clauses Acts, 1847, with respect to capital or profit, in the case of a company, shall no longer apply when the undertaking is in the hands of the corporation. That very point is covered by the *Wigan* case and by other cases. It is a necessary consequence, in the case of the transfer of an undertaking from a company to a corporation, that the conditions applicable to a corporation shall attach to the undertaking, and not those that attach to a company. This is a *change in name* and no change in substance.

Mr. RICKARDS: The words of clause 206 are that the corporation may purchase the undertaking upon such terms as may be mutually agreed on "with all modifications necessary or expedient for adapting the same to the provisions of this Act." These modifications are to be agreed on between the corporation and the company, and the petitioners will be no parties to this agreement, though they may be affected by these modifications, which import some variations from the former power.

Stephens: They only enable the local board to buy under another name. If the petitioners had no right to be present to say anything against the original conditions, what right have they to be heard against modifications of those conditions? In the *Wigan* case there was a change of position and a modification of the former Act, but an outside local board were not allowed to appear, because it was held that the change of position was only the result of what had been already sanctioned by Parliament.

The CHAIRMAN: We think the petitioners are entitled to a *locus standi*, limited to clause 206.

Locus standi Allowed, as limited.

Petition of (4) ACCRINGTON GAS AND WATERWORKS COMPANY.

Purchase by Local Authority of Gas Undertaking by Agreement—Gas Company Opposing—Gas and Water Mains, Injury to, from Sewerage Works—Riparian Owners, Interference with Rights of—Powers to Divert or Level Bed of Stream—Arching over of Stream by Riparian Owners, Restrained by Bill.

The corporation of Accrington promoted a bill, which among other objects sought authority to purchase the undertaking of the gas and water company by agreement, to construct outfall sewers, which would disturb the company's mains, and to interfere with the rights of the riparian proprietors over a stream running through the borough, upon the banks of which stream the company's works were situated. The company petitioned against all those provisions:

Held, that the petitioners were not entitled to oppose permissive powers of purchase over their undertaking, as their own assent was necessary for the exercise of those powers, but *locus standi* granted to them in respect of

apprehended interference with their mains, and with their common law rights as riparian proprietors.

The *locus standi* of the Accrington gas and water-works company was objected to, because (1) no property, right, privilege, or interest of the petitioners will be affected by the bill; (2) paragraphs 1 to 10 of the petition inclusive consist simply of recitals of the objects of the bill, and do not disclose any ground of opposition to the same; (3 and 4) the promoters do not admit that the mains, pipes, and apparatus of the petitioners will be displaced as alleged, or that more circuitous routes will be requisite to relay the same, owing to the construction of the proposed sewers and sewage works, and in any event the petitioners are not entitled to be heard against, or to oppose the execution of such sewers and sewage work by an urban sanitary authority, or as to the period for executing the same. At the utmost the petitioners should be heard (if at all) as to clauses for the protection of their mains, pipes, and apparatus; (5) the petitioners refer to powers sought by the corporation with regard to the river Hyndburn, but they fail to show that they have any interest or property in the river Hyndburn, or that such powers, if granted, will injuriously affect them in such manner as to entitle them to be heard; (6) the petitioners object to clause 206, but the same is purely permissive, and is moreover based upon existing legislation relating to the petitioning company; (7) the petitioners complain of part xvi. of the bill relating to the powers of electric lighting sought by the corporation. The promoters deny that any such competition will arise under the bill as, according to the practice of Parliament, entitles the petitioners to be heard. At all events the petitioners should be heard (if at all) only as to clauses for the protection of their mains, pipes, and apparatus from the exercise of the powers in question; (8) the petitioners have no representative or other character entitling them to question the expediency of entrusting the corporation of Accrington with the general powers sought by the bill; (9) the petitioners set forth no interest which, according to practice, entitles them to be heard save as before mentioned.

Clerk, Q.C. (for petitioners): The bill proposes among other objects the construction of an outfall sewer which will pass down Hyndburn-road, along which our principal gas and water mains are laid. We allege that these and other mains of the company will be displaced and otherwise interfered with by the proposed

sewage works; and on this ground we object to clause 135 which would authorize the construction of the outfall sewers. (*South London Gas Bill*, 2 Clifford & Stephens, 218; *Nottingham and Leen District Sewerage Bill*, *Ib.* 292.) The bill also (clauses 145—151) proposes to authorize the corporation to divert and improve the course of the river Hyndburn which passes through a portion of our works. Under the powers in the bill the corporation will be able to prevent riparian owners within the borough from arching or covering over the river; and clause 149 relieves the corporation from all claims to compensation to owners or occupiers, unless in the case of negligence.

Mr. RICKARDS: If you are a riparian proprietor and own the land on both sides of the river, I apprehend you can arch over the stream, or may build a bridge over it, as long as you do not interfere with the rights of other riparian proprietors. Any power therefore in the bill restricting the rights of riparian owners as to arching over the river, is an interference which seems to give you a *locus standi*.

Clerk: There can be no doubt that, under the bill, the corporation would be able to prevent us from exercising the rights of arching over the stream. Then we object to clause 206 giving the corporation the right to purchase our works by agreement. Such a power of purchase over a private undertaking, if not assented to by the company, may be made use of by the public body as a reason for compulsory purchase hereafter. It is an intimation that, in the opinion of Parliament, it would be to the public interest at some time or other that the gas or water undertaking should be purchased.

Mr. RICKARDS: But when the bill came to convert the permissive power into a compulsory one, you would be heard against it. I do not see how you can be injured if your consent is necessary.

Pembroke Stephens, Q.C. (in reply): Our answer to these petitioners, as to clause 206, is the same as to the other petitioners. The consequences of purchase, whatever they may be, can only arise if the company consent. If they do not consent, there is nothing in the bill or any of the previous Acts which will enable us to take over the undertaking, and the company therefore can receive no injury. As to the apprehended interference with their mains by our sewers, I concede their right to be heard to ask for a protective clause, but not that the company should have a right to rove all over the bill.

Mr. RICKARDS: We can give a *locus standi* against clause 135, and then the petitioners will be able to propose protective clauses upon the question then raised. As to the river

Hyndburn, what do you say to the interference under the bill with the company's common law right to make an archway over the stream?

Stephens: If you think they are likely to suffer any injury under those clauses in the bill, I will not contest the point.

The CHAIRMAN: We give the Accrington Gas and Water Company a limited *locus standi* against clause 135, and also against all the Hyndburn clauses, i.e., clauses 145 to 151 inclusive.

Locus standi Allowed as limited.

Agents for all the Petitioners, *Lewin, Gregory & Anderson*.

Agents for Bill, *Walker & Co.*

ALEXANDRA (NEWPORT) DOCK BILL.

Petitions of (1) COLLIERY PROPRIETORS, IRON-MASTERS, AND COAL-SHIPPIERS AND MERCHANTS; (2) SHIPOWNERS TRADING TO THE PORT OF NEWPORT AND OTHERS; (3) CORPORATION OF NEWPORT.

28th July, 1882.—(Before Mr. HINDE-PALMER, M.P., Chairman; Mr. PARKER, M.P.; Sir JOHN DUCKWORTH; and Mr. BONHAM-CARTER.)

Docks, Loading and Discharging Ships in—Labour, exclusive Control of, claimed by Dock Company—Merchants, Shippers, and Shipowners opposing Monopoly of Loading, &c., by Dock Company—Municipal Corporation apprehending Non-employment of Ratepayers in Docks—Prosperity of Port, Municipal Corporation alleging Injury to—Footpath, stopping up of, by Dock Company—Harbours, Docks and Piers Clauses Act, 1847.

A dock company, in a bill for the construction of a new dock, asked for exclusive powers to employ stevedores and labourers within the dock premises for the stowage and discharge of cargoes and for other purposes, defending these powers on the ground that they were as necessary and as little open to objection in principle as the exclusive right of appointing dock-masters by the company, or as the appointment of porters by a railway company for the stowage of freighters' goods and passengers' luggage. The powers thus sought

were to be conferred by bye-laws to be first sanctioned by the Board of Trade. They were opposed (1) by coal-shippers, merchants and others; and (2) by shipowners of the port, all of whom now employed independent labour, and alleged that the monopoly which such powers would confer on the promoters would injuriously affect them in the conduct of their business. The municipal corporation (3) also petitioned against the grant of these powers, on the ground that they would take away the employment of several hundred ratepayers and injuriously affect the prosperity of the port. The corporation also alleged that the bill proposed to stop up a foot-path or road which the promoters had agreed with the landowner to make, this agreement being scheduled to their Act of 1865:

Held, that petitioners (1) and (2) were entitled to be heard against the exclusive grant of the powers in respect of labourers, but that the *locus standi* of the corporation must be restricted to their allegations as to the foot-path.

The *locus standi* of colliery proprietors, iron-masters, coal-shippers and merchants, was objected to, because (1) no land or other property of theirs will be taken; (2) the bill does not contain any provision affecting the petitioners; (3) they have no such interest as entitles them to be heard against the bill; (4) none of the petitioners possess or employ exclusively any staff or gang of persons for loading or discharging their own traffic at the Alexandra docks, nor do they possess or exercise any control over persons so employed; (5) several of the petitioners carry on their business at Cardiff, and load and discharge their minerals and goods there, and have no such interest in the port and docks at Newport as gives them any right to interfere; (6) the limited companies whose names are appended to the petition cannot be heard, inasmuch as, being incorporated under the Companies' Act, 1862, they ought to have sealed the petition with their common seal, but have (with one exception), omitted to do so, and the petition does not even show that the persons who have irregularly signed the petition on behalf of such limited companies had any authority for so signing.

The *locus standi* of shipowners trading to the port of Newport, and others, was objected to on similar grounds.

The *locus standi* of the corporation of Newport was objected to on the same grounds as those contained in objections 1, 2 and 3, and also because (4) they have no concern with the foot-paths and roads referred to in the petition. When the promoters' Act of 1865 was passed, certain arrangements were made between the promoters and the owners of the land in regard to roads, and although the boundary of the borough of Newport was afterwards extended in 1876 so as to include the land in question, the said arrangements with the landowner do not and cannot devolve upon the petitioners before the roads are formed and dedicated to the public, and taken charge of and repaired by petitioners as the road authority; (5) the petitioners having nothing to do with the loading and discharging of ships, the powers referred to in the petition cannot possibly affect them.

Colborne, solicitor (for petitioners (1)) : The bill is for the purpose of empowering the Alexandra (Newport) dock company to make a new dock and other works in extension of the company's works in the borough of Newport, and for other purposes, and our opposition is directed against clause 40. That clause is as follows :— "The powers of the company for making bye-laws shall extend to bye-laws for conferring on the company solely the power of loading and unloading vessels, and employing persons to perform all duties and labour within the limits of the company's property, and bye-laws for that purpose shall be confirmed in the following manner and not otherwise (that is to say), the same shall be submitted to the Board of Trade, who are hereby empowered to allow, disallow, or vary the same." The petitioners are largely interested in the iron works and collieries of Monmouthshire and Glamorgan-shire, and in exporting coal, iron and steel at the Alexandra dock, and in importing iron ore and pit-wood at this dock. The promoters do not object that we are individuals and do not represent a class. At present the petitioners retain in their own hands the employment at the company's dock of a considerable amount of labour in connection with the shipping of coal, iron and steel, and the discharging, landing, unloading and receiving of iron ore and pit-wood; and they object to the powers sought by clause 40, which would vest in the company the sole and exclusive power of loading, unloading, discharging, stowing and trimming all goods in the company's docks, thereby creating a most prejudicial monopoly in the hands of the company, and depriving us of the control we now exercise over the stowage and unloading of our goods. It is not the fact, as urged in objection 4, that none of the petitioners possess or employ exclusively

any workpeople for loading or discharging. Several of the petitioners employ their own gangs of men, who work for them and for no one else. Others of the petitioners may occasionally employ this or that gang; but in every case the petitioners now have the control of the people thus employed by them.

Chandos Leigh, Q.C. (for petitioners (2)) : We represent nearly the whole of the shipping interest using the port of Newport; and we ask to be heard against clause 35 as well as clause 40. Clause 35 provides that the company shall have the appointment of meters and weighers, and we allege that the bill will compel all shipowners trading to the company's docks to employ the company's servants in loading and unloading vessels, and in almost any work on board our vessels while within the limits of the company's property. Some of this work is now ordinarily done by the ships' crews, who would have to stand idle if the bill passed. The efficient loading of cargoes, especially in the case of iron-laden vessels, is a matter of the greatest importance to the owners and masters, while it is of comparatively small importance to the dock company, whose interest would be its speedy and economic, rather than its proper and efficient performance. The men engaged on board the ship would not be responsible to the owner and would not have that interest in the work which they have when selected and employed by the owner direct. The Newport stevedores have as a body always performed their duties satisfactorily, and no good reason in respect of efficiency can be shown for changing the system of employing these independent stevedores; while, if the company obtain a monopoly of the work, the charges will probably be higher than those now made. The same result will follow from the clause as to meters and weighers. As to clause 40, a similar power was proposed to be taken by the Mersey dock and harbour board, and in that case shipowners were allowed to be heard without any objection to their *locus standi*.

Pembroke Stephens, Q.C. (for corporation of Newport) : The whole system of the docks is within the borough of Newport, and we ask for a general *locus standi* against the bill on two grounds—first, because the promoters propose under clauses 35 and 40 to employ their own labourers, whereby they will throw out of work 400 or 500 ratepayers, and whereby also, as we say, the prosperity of the port will be affected, inasmuch as the condition of the coal exported will not be so good as its condition is at present. (*Birmingham Proof-House Bill*, 1 Clifford & Stephens, 125.) Secondly, as the street authority, we oppose the provision in the bill to stop up a

foot-path or road, which, under an agreement with Lord Tredegar, scheduled to the promoters' Act of 1865, they undertook to make, and which road when made was "to be open to the public free of charge." Clause 12 empowers the promoters to stop up and discontinue a foot-path which has been used by the public from time immemorial, and without interruption as a river-walk or promenade. The new road constructed by the company is not in the position authorised by the Act of 1865 and is, besides, narrow and inefficient. We also apprehend that under the bill it may be stopped up at the will of the company, which would be in effect a repeal of the statutory provision made in 1865. The effect of clause 40 on individual interests has already been urged. We say, in addition, that it would be detrimental to the interests of the port, and would injuriously affect the inhabitants of the borough, destroying the free market for labour now open to them, and placing in the company's hands a monopoly repugnant to public policy, and injurious to the true interests of commerce.

Batten (in reply): The company are coming to Parliament for power to construct a large dock at Newport, in addition to their existing dock there. Section 84, in the Act of 1865, which authorised the existing dock, provided that it should be lawful for the company to appoint and license a sufficient number of persons to be meters and weighers within the dock.

Mr. PARKER: Does the Act say exclusively of others?

Batten: No. Now that the company seek to construct this new dock, they ask for the same power to appoint meters and weighers. These shipowners have no more right to object to the appointment by the dock company of the weighers and meters in the new docks, than ordinary passengers would have to object to the appointment by a railway company of porters on the platform of a station.

Chandos Leigh: You are putting your servants on our vessels.

Batten: A porter taking your box in his hands is an analogous case. We are proposing to build a new dock, and we are proposing to make bye-laws for the regulation of the new dock. These bye-laws are to be subject to the approval of the Board of Trade, and under them we are to have the appointment of the meters and weighers, and of the trimmers. Why should not we have the right to appoint these men in the same way that we appoint our dock masters? I submit that we have a right to say to shipowners, "One of the terms of your coming into this dock is that we shall appoint these meters and weighers and trimmers, and if you do not like

to come into our dock upon those terms, you can go to some other dock." In fact, we might shut up our dock to-morrow.

Pembroke Stephens, Q.C.: By the Harbours, Docks and Piers' Act, 1847, sec. 33, a dock, when opened, is to be free to all shipping, subject to the payment of the rates. What the promoters are proposing is, that the dock shall not be free to all persons, but that the dock company shall have the monopoly in their hands.

Batten: Shipowners and freighters have not the right to come and unload their goods on any part of our quays; they must go where we tell them to go.

Mr. PARKER: Having berthed them where you like, have they not the power of employing their own workmen?

Batten: No; we can forbid their men coming into the dock premises.

Pembroke Stephens: That we deny.

Batten: The General Act assumes that the dock-owners load and unload, though they may permit the crews and other persons to assist.

The *CHAIRMAN*: There is nothing in the Act of 1865, as it appears to me, that enables you to exclude workpeople employed by other persons.

Batten: The present bill does not alter the position of the parties at all. We have, under our existing Act of 1865, the right, though we may have been negligent in not exercising it, of appointing our own meters and weighers. With our smaller dock we may have been ready to ignore what has been going on; but we could have made a bye-law, saying that no one but meters and weighers appointed by ourselves should be employed by any person in our docks. Now that we come for a dock of a larger size, we find that it is necessary to have our own meters and weighers.

Mr. PARKER: You are applying to Parliament for these powers; and as the shipowners are coming forward and saying that conditions ought to be imposed upon the grant of these powers, the question is, whether they ought to be heard?

Batten: We are not going to put upon the shippers and freighters any compulsory toll. We are only going to make bye-laws by which the persons who do the work are to be our servants.

Sir JOHN DUCKWORTH: They are to be paid by the shipowners whose ships they discharge?

Batten: Yes. As to the allegations of the corporation, the men we should employ must necessarily reside in the borough and be rate-payers, and the probable effect of the bill would be the employment of a greater number of rate-payers in Newport than heretofore. With regard to the foot-path, all that has been done is that

Lord Tredegar and the company have entered into an arrangement, which by mutual consent is now to be varied. We bought certain land of Lord Tredegar for the purpose of making docks, and now neither he nor the company want the particular road contemplated by the agreement of 1864. But another road is to be substituted for this foot-path.

The CHAIRMAN: We are of opinion that the *locus standi* of the corporation should be *Disallowed*, except as to clauses 12 and 13 (relating to the foot-path and road) and so much of the preamble as relates thereto. We *Disallow* the *locus standi* of petitioners (2) except as to clauses 35 and 40 and so much of the preamble as relates thereto. We understand that the colliery proprietors do not want to be heard against anything in the bill except clause 40.

Locus standi of the Corporation of Newport *Allowed* against clauses 12 and 13, and so much of the preamble as relates thereto.

Locus standi of Colliery Proprietors, &c., *Allowed* against clause 40, and so much of the preamble as relates thereto.

Locus standi of Shipowners trading to the Port of Newport, &c., *Allowed* against clauses 35 and 40, and so much of the preamble as relates thereto.

Agents for Petitioners (1), *Sherwood & Co.*

Agent for Petitioners (2 and 3), *Rees.*

Agent for Bill, *Bell.*

ASCOT DISTRICT GAS AND WATER BILL.

Petition of OWNERS, LESSEES, AND OCCUPIERS
IN THE DISTRICT OF SUNNINGHILL.

27th April, 1882.—(Before Mr. HINDE-PALMER, M.P., Chairman; Mr. PARKER, M.P.; Sir JOHN DUCKWORTH; and Sir F. S. REILLY.)

Gasworks, Construction of—Owners, &c., of adjacent Dwelling-Houses—Amenities, interference with—Injurious Affecting—Petitioners within and beyond 300 yards' Limit—S. O. 15 (Notice in Case of Gasworks, &c.)

The Bill authorised the construction of gasworks in the immediate vicinity of the petitioners' property, which was situated in some cases within the 300 yards' limit, prescribed for purposes of serving notices under S. O. 15, and in other cases beyond that distance. It was attempted to obtain a hearing for

all the signatories to the petition, on the ground of interference with residential amenities :

Held, however, that only such of the petitioners as were owners, lessees, and occupiers within the limit prescribed by S. O. 15, were entitled to be heard.

The *locus standi* of the petitioners was objected to, because (1) no lands or property, rights or privileges of theirs are taken or interfered with by the bill; (2) the petition emanates from no public meeting, and is signed only by 45 persons, who do not represent the inhabitants of the district to be supplied, and are not entitled to be heard separately; (3) there is nothing in the bill to compel the petitioners to take the supply of gas provided for under the bill, or to prevent them from manufacturing their own gas; (4) they vaguely suggest that some of them are owners or occupiers of houses within 300 yards of the site of the proposed gasworks, but they do not say which of them, and it appears on the face of the petition that some are not within that limit. The petition is too vague and informal in this respect, and none of them are entitled to be heard on that ground; (5) they do not allege, nor have they, any interest which entitles them to be heard according to practice.

Richards, Q.C. (for petitioners): The bill is one for supplying a large district, including the parish of Sunninghill, with gas and water, and it contains the usual powers for converting or utilising, and dealing in materials used in and about the manufacture of gas, and of residual products resulting from such manufacture, selling and fixing meters, and so forth. With regard to water supply, there is, as alleged in our petition, an existing company incorporated by the Sunninghill Water Act, 1877, for supplying our parish with water, so that no further supply is necessary, and that part of the bill will probably be rejected by the Committee. As to gas, we allege that no supply is required, and that the erection of gasworks and manufacture of gas will have a most injurious effect on our property, and the neighbourhood, which is most rural, picturesque, and desirable for residential purposes. We allege that the proposed gasworks will be within 300 yards of some of the petitioners' residences, and just over 300 yards from others, which are named and described in the petition. The description in the bill of the situation of the gasworks is so inaccurate as to have misled many of the petitioners. Although S. O. 15 only requires that owners or occupiers of

property within 300 yards of proposed gasworks should be served with notice, it does not necessarily follow that they are the only persons entitled to be heard against their erection, and the injury to residential amenities is practically the same in all cases. With regard to the objection that the petition does not emanate from a public meeting, every person of any position in the neighbourhood signs it. They would not represent the feeling of the neighbourhood any more if they petitioned through the medium of the vestry.

Balfour Browne (for promoters): With regard to the alleged misdescription of properties in the bill or schedules, we deny the fact, and even if true, it is a S. O. objection. As to the 300 yards' limit, Parliament in framing the S. O. evidently fixed that as the limit within which persons were to be considered as affected by the works. Many of the petitioners are not within that limit and in the case of those who are, I submit that the petition is too vague in its allegations to entitle them to be heard.

The CHAIRMAN: We think that the petition is sufficiently explicit. Following the terms of S. O. 15, the order of the Court is, that the *locus standi* of the Petitioners is *Disallowed*, except such of them as are owners, lessees, or occupiers of dwelling-houses situated within 300 yards of the lands upon which the gasworks may be constructed.

Agents for Bill, *Wyatt, Hoskins & Hooker*.

Agent for Petitioners, *Bell*.

BEACONSFIELD, UXBRIDGE, AND HARROW RAILWAY BILL.

Petition of THE GREAT WESTERN RAILWAY COMPANY.

16th March, 1882.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE-PALMER, M.P.; Mr. PARKER, M.P.; and Mr. RICKARDS.)

Railways—Competition—Traffic, Through and Local—Working Agreements with other Companies—Running Powers.

The bill proposed the construction of an ostensibly local line, but as deposited in the House it contained a clause empowering the promoters to enter into working and other agreements with several other companies, some of whom ran into the Metropolis. The Great Western company claimed to be heard against the bill, as

owners of a direct line of railway from Uxbridge, one of the points to which the proposed line was to be constructed, to Paddington, whence they ran through carriages and some trains by means of the Metropolitan railway into the city. They contended that by the powers of agreement with other companies contained in the bill, the promoters would be enabled to compete with them for London traffic:

Held, that the competition thus created, though admittedly remote, was sufficient to entitle them to be heard against the bill.

The *locus standi* of the petitioners was objected to, because (1) no lands or property of theirs will be taken or interfered with under the bill; (2) the proposed railways are not in any way in competition with their railways; (3) the powers contained in clause 39 of the bill to run over and use portions of the railways of other companies therein specified, will not enable the promoters to compete for traffic at Uxbridge or elsewhere with the petitioners; (4) the powers contained in clause 41 of the bill, to enable the promoters and the other companies named therein to enter into agreements and work and use the proposed railways, and otherwise in relation thereto, do not give the petitioners a right to be heard against the bill upon the grounds stated in paragraph 15 of their petition, or on any other grounds disclosed in their petition; (5) the alterations or improvements which the petitioners allege they have recently made in their undertaking to satisfy the public demands at Uxbridge and at other places served by their railway, and to exclude the promoters and other companies from constructing railways between Uxbridge and the Metropolis and other places named or referred to in the petition, and other matters stated in paragraphs 3, 4, 5, 6, 7, 8, and 9 of their petition, are not such as to entitle them to be heard against the bill; (6) the petitioners have no interest in, and are not affected by any financial arrangements the promoters may have made or may think fit to make for carrying out the proposed undertaking, or in any arrangements alleged to have been made by the promoters for effecting the deposit in the Chancery Division of the High Court of Justice, pursuant to S. O. 57; (7) the petition discloses no specific grounds which entitle the petitioners to be heard.

Saunders, Q.C. (for petitioners): The petitioners claim a *locus standi* on the ground of competition. They have a main line from

Paddington to Swindon with a branch to Uxbridge. A line was passed last year called the Uxbridge and Rickmansworth railway (being a line between those two places), as against a line promoted by the Great Western company, which line effects a junction with the Great Western near the Uxbridge station. It is proposed by the bill to make a line crossing at right angles the Uxbridge and Rickmansworth railway at a place called Denham, a place which can yield no traffic to the line, and the same observation would apply to Beaconsfield, a place with a population of about 1,600. By the bill, powers are taken to enable the company to agree with all the companies who could carry traffic from Uxbridge to London, viz., the Uxbridge and Rickmansworth, the London and North-Western, and the Metropolitan railway companies, for all purposes for which such agreements are ever made, including the construction of the railway, and the working, use, management, and maintenance of it. The Metropolitan company are the owners of a line from Finchley-road to Harrow, which has been recently opened, and the bill takes power to construct a line making a junction with that line at Harrow and also with the London and North-Western at Harrow. The position of the Great Western company as regards Uxbridge is this; that a passenger from Uxbridge to the City can go to Paddington by Great Western railway, and from Paddington to Moorgate-street by the Metropolitan, over which the Great Western has power to run two trains a day each way, and also to run in other trains a number of through carriages, which amounts to the same thing, so that we are distinctly interested in traffic going from Uxbridge to the City.

Mr. RICKARDS: The proposed line would afford a very circuitous route into the City as compared with the Great Western, and would run over the lines of three companies.

Saunders: It would only be two miles longer than our route. By entering into arrangements with the Metropolitan and with the Uxbridge and Rickmansworth companies the promoters could run a continuous train from Moorgate-street to Uxbridge, and it would be practically in one hand; and if they only made an agreement with the Uxbridge and Rickmansworth company it would be in two hands only. The competition here is by means of this proposed line in conjunction with the line of the Uxbridge and Rickmansworth company of last year. It is one of those cases in which part of a competing route is brought in one year and another part subsequently, and this is obviously done to defeat opposition, more especially that of competing railway companies.

There have been many cases where railway companies have been heard on the ground of competition where the line proposed was to terminate at some distance from the stations belonging to the opposing company, because the traffic that would be carried by the new railway was practically traffic that went by the old one. (*Pinner Railway Bill*, 2 Clifford & Rickards, 214; *Hounslow and Metropolitan Railway Bill*, *Ib.* 105; *Hoylake and Birkenhead Railway and Tramway Bill*, on the *Petition of the London and North-Western and Great Western Railway Companies*, 3 Clifford & Rickards, 67.)

Balfour Browne (for promoters): The competition is too remote to entitle the Great Western company to be heard. A passenger going from Uxbridge to the City would have to go over the line not only of three, but of four companies altogether. The proposed line is purely a local one. The line of last year from Uxbridge to Rickmansworth, which was promoted by an independent company, formed connections with the Great Western railway at one end and with the London and North-Western at the other, and this line is promoted with a view to connect Beaconsfield, which is an increasing place, with the Metropolis. The case of the petitioners is largely based upon the powers given by a clause in the bill for entering into agreements with certain companies. That clause will, as a matter of fact, be struck out of the bill, as the necessary consents have not been obtained at Wharncliffe meetings, but with the clause as it stands, we should have to enter into agreements with three companies in order to compete for traffic which is carried by the Great Western company alone. Competition already exists between Uxbridge and London, *via* Rickmansworth, and the London and North-Western railway. If we get no powers to enter into working agreements with the Metropolitan or with the London and North-Western (and those powers are struck out of the bill) passengers by our line when they get to Harrow will have to change into the Metropolitan or to the London and North-Western. As to the cases cited on behalf of the petitioners,—

The **CHAIRMAN:** You need not go into those cases, as every case of competition must be decided by its own special facts. The Court, although they are of opinion that the claim is not a strong one, *Allow the locus standi* of the Petitioners.

Locus Standi Allowed.

Agents for Bill, *Durnford & Co.*

Agent for Petitioners, *Mains.*

BELFAST HARBOUR BILL.

Petition of LORD TEMPLEMORE.

4th July, 1882.—(Before Mr. HINDE-PALMER, M.P., Chairman; Mr. PARKER, M.P.; Sir JOHN DUCKWORTH; Sir F. S. REILLY; and Mr. BONHAM-CARTER.)

Harbour Bill, Slob Lands affected by—Practice—Title, disputed, to Lands to be Compulsorily Purchased—Proof of Ownership by Landowner, how far necessary—Plans and Notices—Book of Reference, effect of Inserting Name in—Mistake alleged by Promoters, in Book of Reference.

A petitioner claimed to be heard against a dock bill, in respect of land of which he alleged he was the owner. The promoters in their objections denied his title, but had served him with the usual notice and inserted his name in the book of reference. They now stated that this had been done *ex abundante cautela*, or by mistake, and in argument attributed the ownership of the land in question to another person. On the other hand, it was stated by the petitioner's counsel, though not alleged in the petition, that his title to the land had been recognised by the Irish courts, that it rested upon an ancient grant from the Crown, and had been admitted in previous dealings between the parties:

Held, without further proof, that the petitioner had shown a *prima facie* case of ownership, and was entitled to a general *locus standi*.

The *locus standi* of Lord Templemore was objected to, because (1) he is not the owner, lessee or occupier of any lands or buildings which the bill confers power to take or purchase by compulsion; (2) he alleges that the power sought by section 59 of the bill, to extend the time for leasing lands granted by the Belfast Harbour Act, 1870, will injuriously affect him, by depriving him of his right of pre-emption under the Lands Clauses Consolidation Act, 1845, but the lands which may be leased by the commissioners under the Act of 1870, or under the bill, are not superfluous lands within the meaning of the Lands Clauses Consolidation Act, 1845, neither has the petitioner any right or interest whatsoever in the lands dealt with by the bill,

either present or prospective; (3) the powers or obligations of the commissioners under their existing Acts, with respect to superfluous lands, are not altered or affected by the bill; (4) the bill does not authorise the commissioners to lease any superfluous lands, or lands other than those that are now, or may hereafter be, required or used in connection with, and for the purposes of the commissioners' undertaking, and the bill in no way deals with or affects superfluous land or lands in which the petitioner has, or can have, any interest; (5) the bill in no way affects the position of the petitioner; (6) the several grounds of complaint contained in the petition are not such as, according to the practice of Parliament, entitle the petitioner to a hearing, and he has no sufficient interest entitling him to be heard as to any of the matters contained in his petition or in the bill.

Littler, Q.C. (for petitioner): This is a bill to authorise the construction of additional docks and other works at Belfast, to extend the powers of the Belfast harbour commissioners, and for other purposes. For the purpose of executing the works projected, the promoters ask for power to take certain lands, numbered 14 on the plans. In the book of reference the owners of these lands are described as the Marquis of Donegal and Lord Templemore, and we have received the usual notice. That being so, we claim an unlimited *locus standi*. We have a grant from the Crown, upwards of 200 years old, of the whole of the shore right down to Belfast Lough, which comprises these very lands, and we have claimed them during the last 200 years or more, without interruption or dispute.

Sir F. S. REILLY: The notice and the book of reference are not conclusive.

Littler: No doubt, but coupled with the fact that the promoters gave us a similar notice in 1854 for adjacent land held by Lord Templemore under the same title, and paid us for that land, the notice and the reference now are tolerably conclusive against them. In this Court we have not to prove our title; the only question is, whether there is *prima facie* evidence of our being entitled.

Pembroke Stephens, Q.C. (for promoters): According to the conveyance of 1854, Lord Templemore's interest in these lands ended at the boundary there shown, and the adjoining land now claimed by him is there described as belonging to Sir Thomas McClure.

Littler: That is the inland land; our claim is to the foreshore off the marsh land. The reference in the conveyance is not to the foreshore but to the adjoining inland land.

Sir F. S. REILLY: The Court think you have made a *prima facie* case to be heard as a landowner, and that it now falls on Mr. Stephens to reconcile the appearance of Lord Templemore's name in the book of reference with the objection that he is not interested in these lands.

Stephens (in reply): The name was inserted in the book of reference either *ex abundante cautela* or through mistake. There is an express dictum of this Court that a petitioner cannot give himself a title as a landowner simply by saying that he is one. The Court must have proof—not necessarily by the production of Lord Templemore's title-deeds, but by some evidence—that the lands affected by the bill form part of the same property as the lands taken in 1854, and that they belong to the petitioner.

Sir F. S. REILLY: Mr. Littler says Lord Templemore is entitled to these lands under an ancient grant from the Crown. We cannot possibly try the question of Lord Templemore's ownership of the slob lands in Belfast.

Littler: In a deed of 1872 the promoters actually recite the charter under which we claim this very same land.

Stephens: Other land, not this land.

Littler: Then there has been a long litigation between Lord Donegal and Lord Templemore, the result of which is that Lord Donegal has been found by the Irish Courts to be entitled to all the slob land in Antrim and Lord Templemore to all in Down.

Stephens: The Court have not seen the patent or deed upon which the petitioner rests his title, and a mere statement as to the decision of the Irish courts cannot be accepted as evidence in the absence of material allegations in the petition. The *Belfast Harbour Bill* (2 Clifford & Stephens, 74) contains a decision in point. If in this case, where the ownership is distinctly controverted, the Court do not require some proof of ownership, how are they ever to shut out anybody who chooses to say "Such and such a piece of land belongs to me?" The fact that he is put upon proof by the objectors, it will be urged, does not matter.

Mr. PARKER: Whose land do you say this slob is?

Stephens: Sir Thomas McClure's. I am told that negotiations have taken place with Sir Thomas McClure for the purchase of this very land.

Littler: If Sir Thomas McClure were here he would say it was not his.

The CHAIRMAN: We think the dealings of the promoters with Lord Templemore on former occasions, coupled with the insertion of his name

in the book of reference, create a sufficient *prima facie* case of ownership to justify the Court in giving a *locus standi* to the petitioner.

Stephens: Surely, the ownership being challenged, some evidence of it ought to be given. In the teeth of an express denial of title by promoters, the *onus* of proof lies upon the petitioning owner. As to the mention of the name in the book of reference, the Court will hardly give a *locus standi* in virtue of a mistake.

Littler: Had the name not been inserted there would have been an objection on S. O., and the bill might have been lost. As to the case cited, the petitioner's *locus standi* there was allowed without proof of ownership.

General *locus standi* Allowed.

Agents for Petitioner, *Martin & Leslie*.

Agents for Promoters, *Sherwood & Co.*

BLACKBURN IMPROVEMENT BILL.

Petitions of (1) DANIEL THWAITES; (2) W. TATTERSALL; AND (3) RICHARD A. DODGSON.

March 29, 1882.—(Before Mr. HINDE-PALMER, M.P., Chairman; Mr. PARKER, M.P.; Mr. MELDON, M.P.; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Improvement Bill—Opposed by Owners of Property—Highway, Obstruction to—Standing Places for Vehicles in Streets—Immemorial Custom Interfered with by Local Authority—Property Depreciated by Violation of Custom—Single Owner's Right of, to Oppose Abolition of Custom—Past Legislation, Complaint of.

An improvement bill, promoted by the corporation of Blackburn, proposed (*inter alia*) to prevent any vehicles from being "left standing upon any highway or any part of any highway within the borough," "notwithstanding any claim of right or custom to the contrary." On market days in Blackburn it had been the immemorial custom for vehicles so to stand in front of certain public-houses, and three owners of these houses and of other property petitioned against any interference with the right, alleging that such interference would cause serious damage to their property. There was no allegation that the petitioners were owners of the vehicles, or of the soil on which these were accustomed to stand:

Held, that in the absence of any allegation of specific interest in any portion of the land to which the custom applied, the petitioners could not be heard as owners of property affected by the bill, and had no right to represent the inhabitants generally in opposition to the governing body of Blackburn, with respect to the maintenance of the custom.

The *locus standi* of all the petitioners was objected to on similar grounds, because (1) no land, &c., of theirs will be taken or affected; (2) various clauses in the bill objected to by them are only a re-enactment of existing statutory powers possessed by the corporation of Blackburn; the status of the petitioners is therefore in no way altered by the bill and their complaint is one of past legislation; (3) they complain that certain property of theirs will or may be injuriously affected by the exercise of the powers contained in other clauses, but this allegation, even if true, affords no ground of *locus standi*; (4) in their complaint of clause 194, they do not allege any specific damage or interference with their property, rights or interests; and, further, their interests are not different from those of the other inhabitants, nor do they allege that they are the owners of any of the class of vehicles referred to in that clause, which will not prevent them from exercising any right or privilege they are now entitled to exercise. Further, they are single inhabitants and traders, and the provisions of clause 195 are general and applicable to all inhabitants and traders, and such as could only give a right to be heard to parties entitled to represent the interests of the class affected; (5) their complaints as to rating of land are not specially applicable to them, they being only single ratepayers, and not representing a class. Moreover, the bill will not alter or increase the rating powers of the promoters; (6) they have no interest in the objects and provisions of the bill, entitling them to be heard against it.

Pembroke Stephens, Q.C. (for all the petitioners): The bill is one "to consolidate and amend the Acts relating to the borough of Blackburn, and to make further provision for its local government and improvement, and to authorise the construction of tramways, and for other purposes." The petitioners are the owners of large estates within the borough, on which dwelling-houses and public-houses, shops and warehouses have been built; and their cases fall within the class of cases in which owners, as distinguished from ratepayers, claim

to be heard against corporations. Some of the clauses of which we complain throw upon the owners or occupiers the cost of paving and flagging, or of sewerage works in courts, passages or private streets. We also complain of the clauses which will empower the corporation to cleanse, scour, widen, alter and divert the waterway of the bed of the rivers Blakewater and Darwen, and their tributaries, within the borough. Clause 194 is as follows:—"After the passing of this Act it shall not be lawful for any person, notwithstanding any claim of right or custom to the contrary, to permit or suffer any vehicle, carriage, cart, sledge, truck, or barrow, to be left standing upon any highway, or any part of any highway within the borough; and the owner or person in charge of any such vehicle, carriage, cart, sledge, truck, or barrow, acting in contravention of this provision, shall be liable for each and every offence to a penalty not exceeding 40s." We are the owners of inns and public-houses largely frequented, especially on market-days, by farmers and others who from time immemorial have left their carts and other vehicles standing on the highway in front of these houses, without causing any block in the traffic, or any inconvenience or annoyance to the public; and we allege that under clause 194 there will be "a most unnecessary and improper interference with our property, rights and interests," and that, if passed into law, the clause will "cause serious damage to our property."

Mr. RICKARDS: The petitioners do not say they are the owners of the carts and waggons which will be interfered with. Therefore as regards these they merely speak as members of the public, objecting to a provision for the public benefit. Nor do the petitioners say that the ground upon which the carts and other vehicles stand belongs to them.

Stephens: They say they are the owners of inns and public-houses, and add that "from time immemorial the farmers and others frequenting the inns and public-houses have left their carts and vehicles standing on the highway in front of the same."

Mr. RICKARDS: That is on the highway. The governing body, in the interest of the public, find that this is an obstruction. How does that affect the private interests of these petitioners?

Stephens: In another paragraph the petitioners say they object to the bill and to the clauses recited "as an injury to their property, and not required in the public interest." Take the case of a public-house, with a portion of ground projecting into the street; this piece of ground is used as a standing-place for carts, the horses being taken away. Business is thereby

attracted to the public-house which, if the privilege is taken away under the bill, will let for so much less a year.

Mr. RICKARDS: The petitioners fall short of saying that they have any specific interest in the ground to which the privilege attaches, or that any private interest would be affected. The ownership of property affected is merely alleged in general terms. An individual interest must be shown in the *locus in quo*.

Stephens: I have here the conveyance of one of these public-houses, showing the standing-place in front of it. Vehicles take up their position there by permission of the owner of the soil.

Mr. RICKARDS: But the promoters of this bill, as the street authority, have jurisdiction over the surface of the street.

Stephens: Then if so, what do they want with this clause? It is because they have no jurisdiction over this standing-ground that they come here to ask for this special legislation, "notwithstanding any right or custom to the contrary."

Mr. PARKER: Suppose the bill to pass, and objection to be then made to any cart standing on this ground, would it not be a sufficient answer to say that it was standing there by permission of the owner of the soil?

Stephens: No, because if the ground so occupied falls within the definition of "highway" in the bill, the landowner's permission will not avail; and "highway" in the interpretation clause has a very wide definition. The corporation cannot now order the removal of these vehicles. Under the bill they will be able to do so, and will thereby diminish the trade of these houses and the value of the property. That is a direct injury and interference with a legal right, depending on immemorial custom.

Mr. RICKARDS: The owner of a public-house cannot petition against the infringement of a public right; he only speaks as one of the public, unless he can show interference with private interests, and here no such interest is alleged.

Pember, Q.C. (for promoters): You never allow a person whose lands abut on a high road to be heard against a bill to stop up that road. The other clauses objected to are, with trifling exceptions, a re-enactment of old clauses in what is substantially a consolidation bill.

The CHAIRMAN: We think, on the whole, the petitioners are not entitled to a *locus standi*.

Locus standi of all the Petitioners Disallowed.

Agents for Bill, *Tahourdins & Hargreaves*.

Agents for all the Petitioners, *Lewin, Gregory & Anderson*.

BOLTON IMPROVEMENT BILL.

Petitions of (1) NATIONAL ASSOCIATION OF MASTER BUILDERS OF GREAT BRITAIN; (2) RICHARD CUERDON AND OTHERS.

March 29th, 1882.—(Before Mr. HINDE-PALMER, M.P., Chairman; Mr. PARKER, M.P.; Mr. MELDON, M.P.; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Corporations, Municipal, as Traders — Local Authority, supplying Water and Gas fittings, &c. — Association, National, of Master Builders, opposing Local Bill—Competition, between Municipal Corporation, as Water and Gas Authority, and Private Traders—Competition, as to Ordinary Trade, distinguished from Competition under Statute — Public Policy, Questions of, raised by Petitioners—Public Policy, how far affected by Action of Corporations as Private Traders—Licences to Plumbers and Gasfitters, proposed, by Municipal Corporation—Rates, Competition of Local Authority by means of.

Practice—Improvement Bill dealt with by special Committee—Public Policy, Considerations of, how far dealt with by Special Committee on Private Bill.

In an improvement bill for the borough of Bolton, the corporation, as the gas and water undertakers, sought for additional powers to supply gas and water fittings. The grant of these powers was opposed on the ground of competition, and as being against public policy by (1) the National Association of master builders of Great Britain, who did not, however, specifically allege that any of their members were engaged in business in Bolton; and (2) by 18 plumbers and gasfitters in Bolton:

Held, (1) without reply from the promoters that the National Association could not be heard; and (2) that without prejudging the question of public policy involved in the case, the competition which would take place under the bill was not of a character entitling the petitioners to a *locus standi*.

In petitions against a private bill, it was alleged that certain provisions were against public

policy. The Court held that this was a matter for consideration by Parliament; and—the bill being one of a group which had been referred to a Committee specially constituted by the House of Commons*—

(*Per Cur.*) Without a special order it is the duty of such a Committee to examine all parts of the bill, and it is competent for them to strike out or modify any clause which involves any matter of public policy.

The *locus standi* of the National Association of master builders of Great Britain was objected to, because (1) the petitioners allege that they are a National Association of master builders of Great Britain, but they do not claim to represent, nor do they in fact represent the builders of Great Britain or any branch of the building trade; (2) the petition does not allege, nor is it the fact, that any provision in the bill injuriously affects the status of the association as such; (3) the association is a private club or society, and has no status which entitles it, according to the practice of Parliament, to be heard against the bill; (4) the association has not, and cannot have any contract for work in Bolton, which would be affected by the bill; (5) the petitioners are not entitled to be heard on the ground that the provisions of the bill are contrary to public policy; (6) the petition is not the petition of the association, but of a committee alleged to have been appointed thereby, and the petitioners do not allege that the petition has ever been submitted to, or approved of by them.

The *locus standi* of Richard Cuerdon and others was objected to, because (1) no land of

* The following were the terms of the resolution (moved by the Home Secretary, Sir William Harcourt, March 13, 1882), appointing the Committee:—

“Police and Sanitary Regulations,—*Ordered*—That the Committee of Selection do appoint a Committee, not exceeding seven in number, to whom shall be referred all private bills promoted by municipal and other local authorities, by which it is proposed to create powers relating to Police or Sanitary Regulations which deviate from, or are in extension of, or repugnant to, the general law; and that it be an instruction to such Committee to make a special report to this House in respect of any such powers as the Committee may sanction, together with the reasons on which the grant of such powers are recommended, and the recent precedents applicable to the case.”

the petitioners can be compulsorily taken under the powers of the bill; (2) if the petitioners claim to be heard as members of the Bolton masters builders' association, that association is only a private club or association, and does not represent, and has no claim to represent the builders of Bolton, and such an association has not as a body, nor have its members individually, any right to be heard against the bill; (3) the petition states that clause 19 of the bill defines the expression “water fittings,” but the petition does not state that the promoters seek any powers by the bill in relation to such fittings; (4) the only grounds on which the petitioners claim to be heard are competition, and that the bill is contrary to public policy; (5) the petitioners are not entitled to be heard against the bill, on the ground that it is contrary to public policy; (6) the petition does not disclose any such competition as entitles the petitioners to be heard against the bill on that ground; (7) the petition does not disclose any reason why the petitioners should be heard for the insertion in, or exclusion from the bill of any provisions; (8) no grounds are alleged which, according to the practice of Parliament, entitle the petitioners to be heard.

Round (for National Association of master builders of Great Britain): We allege that at a meeting duly constituted, a committee was appointed by the association to present a petition on their behalf against the bill, and to deal with it as they might think best. Objection 6 raises the technical point whether under these circumstances this is really the petition of the association. This point seems to be settled by the case of the *North-Eastern Railway Bill* (2 Clifford & Stephens, 147).

Pope, Q.C. (for promoters): Our substantial objection is that if this is the petition of the association of master builders of Great Britain, they have no right to be heard.

Mr. RICKARDS: Then we may take it that the technical objection is withdrawn.

Round: Clause 23 of the bill provides that the corporation “may manufacture, sell, or let for hire, and fix gas stoves, gas engines, and other apparatus necessary or convenient for the supply or consumption of gas for the purpose of light, heat, or motive power.” Clause 57 also provides that “the corporation may, from time to time, grant licences to plumbers and gasfitters for the fixing and repairing of gas fittings.”

Pope: I will give an undertaking that clause 57 shall be struck out, though I will not concede that these petitioners could be heard against it, inasmuch as I contend that they are parties who could, under no circumstances, be heard against the bill. This bill must not therefore be cited

as a precedent for the claim to a *locus standi* by petitioners in a similar position.

Round : Then we come to the substantial part of the case. The association consists of persons largely employed in building operations in all parts of the country, and in the habit of taking and executing contracts, not only for the erection of houses and buildings of all kinds, but for providing and fitting the same with every kind of appliance that may be considered necessary or desirable with a view to their use and occupation, including gas stoves, gas engines, and other apparatus of all kinds for the consumption of gas for the purpose of light, heat, or motive power. This plan of employing one responsible builder, and of having one contract for a lump sum to include everything, is found in practice to be mutually convenient both to members of the association and those who employ them. We submit that it is contrary to public policy to confer power upon a municipal corporation to trade upon their own account as proposed in clause 23. (*North British, Arbroath, and Montrose Railway Bill*, 2 Clifford & Rickards, 50.) The corporation get their money to carry on their trade out of the rates, and are thus able to fight us on unfair terms.

Mr. RICKARDS : In a somewhat similar case—*Caledonian Railway (Additional Powers), Petition of Blythwoodholme Building Company, Limited* (3 Clifford & Rickards, 23), where a railway company proposed to establish an hotel, the *locus standi* of a neighbouring hotel company was disallowed. This is mere trade competition.

Round : How can this question be raised except by our going before the Committee? If it cannot be raised at all, it is a great hardship.

Mr. RICKARDS : Is it not a matter for public legislation rather than a question to be raised by private individuals?

Round : We should find a difficulty in getting the matter discussed in Parliament on second reading.

The CHAIRMAN : No doubt you would.

Round : If Bolton obtains this power, every other corporation will apply for the same power. The case of the *Hull Lighting Bill* (2 Clifford & Rickards, 251) is on all fours with this case.

Mr. RICKARDS : The petitioners there were not mere private traders but companies incorporated by Act of Parliament and having special power to light the town. They were, therefore, in the same position as competing railway companies.

Mr. MELDON : It is an important question whether a corporation ought to have these unusual powers granted to them of carrying on a private trade by means of the rates.

Mr. RICKARDS : The issue here is whether these petitioners have the right to raise the question.

The CHAIRMAN : And also whether this is the place to discuss the question. The petitioners do not allege that they carry on in Bolton the business of supplying gas stoves and apparatus.

Round : Our trade is in Bolton as well as in other places, and there as elsewhere we have to make a profit, whereas the corporation can say that they will sell these articles without profit, recouping themselves in other ways.

Bund (for Richard Cuerdon and others): This petition is signed by eighteen plumbers and gasfitters, carrying on business in Bolton and within the gas limits of the corporation. Under the bill the corporation seek power to supply water fittings which will "include meters and instruments for measuring the quantity of water supplied and consumed, and any pipes and apparatus for the conveyance, reception, or storage of the water." At present the corporation have only power to supply outside fittings. The bill will authorize them to supply internal water fittings; and the powers asked for with respect to the supply of gas fittings and apparatus will add to the unfair competition we shall have to face and will greatly injure our business. The corporation would be able to undersell us because the exceptional powers given to them in the bill would make them always sure of their money; and we should be contributing to the rates by means of which this unfair competition was maintained.

Mr. RICKARDS : There have been many cases in which corporations have been authorised by their Acts to exercise certain powers of this nature not included in the ordinary objects of their incorporation, but powers which might affect the business of private traders. In any such case have private traders been allowed to be heard on the ground that what was proposed to be done would affect them in their business?

Bund : In a somewhat similar case omnibus proprietors have been heard against tramways bills. (*Edinburgh Street Tramways Bill*, 2 Clifford & Stephens, 131.)

Pope, Q.C. (in reply): It may be desirable that Parliament should by some means or other have the opportunity of considering the question how far municipal corporations should be entrusted with these powers, but here the sole issue is the simple technical question whether sufficient ground has been shown entitling the petitioners to be heard against this private bill. As to the petition of the National Association, it does not even allege that the petitioners are traders who will suffer from this competition;

it does not allege that any one of them is a master builder carrying on business in Bolton; and for anything on the face of the petition the bill might never injuriously affect one of them.

The CHAIRMAN: You need not trouble yourself with the petition of the National Association.

Pope: The other petitioners no doubt carry on business in Bolton, but how are they affected by the bill? Our Act of 1872 already enables us to supply water pipes and fittings "in or about the buildings or lands of the consumers." The word "in" included internal fittings, and the Waterworks Clauses Act, 1863, which is incorporated with our Act of 1872, authorises the undertakers (section 14) to let for hire a meter to any water consumer. We now take the power to sell meters. As to gas fittings, clause 23 would, no doubt, enable the corporation to supply what, but for such power, some of the petitioners might supply. The question is, however, can these eighteen individual traders be heard before a private bill Committee to complain of the competition of a corporation?

The CHAIRMAN: In this case, we have determined to disallow the *locus standi* of the petitioners, claiming as they do a *locus standi* on the ground of competition; but so far as the question of public policy is concerned, we abstain purposely from expressing any opinion; that is to say, the question of the advisability of a corporation or any public body applying their money to other purposes than those to which, as things at present stand, they are authorised to apply it.

Pope: I do not know how far that question is referred to the special Committee.

Mr. RICKARDS: That question is not referred to them, but without a special order it is the duty of the Committee on the bill to examine all parts of it; and it is competent for them to strike out or modify any clause which involves any matter of public policy.

Locus standi of both sets of Petitioners Disallowed.

Agents for National Association of Master Builders of Great Britain, *Field, Roscoe & Co.*

Agents for Richard Cuerdon and Others, *Chester, Mayhew & Co.*

Petition of (3) BOLTON RURAL SANITARY AUTHORITY.

Improvement Bill—Infectious Diseases, Hospitals for, outside Borough of Municipal Corporation—Rural Sanitary Authority, Proposing Safeguards as to Establishment of Hospital in their District—Removal of Persons

suffering from Infectious Disease—Public Health Act, 1875, s. 131—Sanitary Authority, alleging Injury to District from Hospital for Infectious Diseases—Existing Legislation Affecting Public Health, complaint of.

Practice—Clauses of Bill struck out by Order of the House, not by Promoters—Petitioners, technical right of, to appear against Clauses struck out of Bill—Special Committee and Private Bill Committee, Locus Standi of Petitioners before, distinguished.

The corporation of Bolton, being already authorized by the Public Health Act to establish a hospital outside their borough for the treatment of infectious diseases, now promoted a bill containing a clause increasing their powers within their own jurisdiction for the compulsory removal of patients to such hospital. An adjoining rural sanitary authority, within whose district the hospital was to be established, petitioned against the clause on the ground that by its operation, without proper safeguards, the dangers of infection in the petitioners' district would be largely increased. The bill was one of a group which had been referred by order of the House to a general Committee, for the special consideration of police and sanitary clauses. The same Committee also would deal with each opposed bill as an ordinary private bill:

Held, that if this bill had been referred in the usual course to an ordinary private bill Committee, the Court would have been inclined to disallow the petitioners' *locus standi*, on the ground that the clause would merely effect an improvement in existing hospital administration, and that the petitioners' objection was really to existing legislation; but as the bill would go before a Committee specially charged with the consideration of all sanitary provisions, it was desirable that a local authority, upon whom the legislature had imposed sanitary duties, should be able in the Committee to raise the sanitary questions set forth in their petition.

The *locus standi* of the Bolton rural sanitary authority was objected to, because (1) the

petitioners cannot be heard against clause 26, as they are not an urban authority and have no power to light or to contract for the lighting of their district; (2) as to clause 42, the promoters have already power to provide hospitals, and such hospitals may be in the district of the petitioners, and the corporation of Bolton have already the power to remove thereto persons suffering from any dangerous infectious disorders; clause 42 only makes more convenient provision for the exercise of those powers. The petitioners are not therefore entitled to be heard against such a clause; (3) the removal of persons suffering from infectious disease into, or so as to pass through the district of the petitioners, is not such a ground of complaint as entitles the petitioners to be heard.

Clifford (for Bolton rural sanitary authority): For poor-law purposes, the petitioners exercise jurisdiction in a very wide district, extending over 26 or 27 townships, including among those places the borough of Bolton. Outside the borough we have control over questions affecting sewerage, health, lighting and water supply. The corporation of Bolton are owners of the gas and waterworks, and supply outside the borough various portions of our district. We object, first, to the electric lighting clauses of the bill, but as they will be struck out, we should, under ordinary circumstances, have a technical right to appear to see that they were struck out.

Mr. RICKARDS: In this case they must be struck out before the bill can go before the Committee.

Pope, Q.C. (for bill): If these clauses were to be struck out by the act of the promoters, the petitioners would, undoubtedly, have a right to go before the Committee to see that they were struck out; but the clauses have been struck out by the order of the House, and the promoters therefore have no control over them.

Clifford: We are anxious that the decision of the Court upon this point should not be so expressed that it might be quoted against us hereafter, and that we should not be told in a future session, "you have no right to be heard because your *locus standi* was disallowed on the same point on a former occasion."

Mr. RICKARDS: We will take care that our decision is so framed that it shall not appear that your *locus standi* against these clauses is disallowed.

Clifford: Our petition raises various other questions—the proposed extension of the gas and water limits, the extension of the borough boundaries, the new waterworks, and others—as to which our *locus standi* is not objected to.

Pope: We say that the petitioners have no *locus standi* against clause 42 of the bill.

Clifford: That is a comparatively narrow issue. Under the powers of the clause and of the Public Health Act, 1875, the corporation of Bolton propose to establish in our district a hospital for the treatment of infectious diseases; and we, as the rural sanitary authority, object to this invasion, at all events unless adequate precautions are taken in the removal of patients, and to prevent the spread of disease in our district.

The **CHAIRMAN:** These clauses about infectious diseases are the very clauses which the Committee are specially directed to enquire into and report upon; and you contend that, if the special attention of the Committee is to be called to these clauses you are the proper persons to bring the matter before them?

Clifford: Yes, we being charged by the Legislature with the duty of protecting the health of the inhabitants within our limits.

Pope: Under the Public Health Act (sec. 131) the corporation have already power to establish a hospital within the petitioners' district. Clause 42, therefore, as regards the rural sanitary authority, gives us no right which we have not already, and deprives the petitioners of no power which they now possess.

Clifford: The clause gives the promoters very stringent powers for compulsory removal of persons suffering from infectious disease in Bolton to any hospital that may be established. Assuming, therefore, that the corporation are now authorized to erect a hospital in our district, the effect of the clause must be to increase the number of inmates, and so increase our liability to injury. We ask therefore to oppose any change in the general law unless some regulations are introduced for our protection as regards the removal of patients and the spread of disease from the hospital itself. We do not wish to be launched hereafter into such a litigation as that in the Hampstead hospital case through the want of precautions which might be adopted in an Act like this, enlarging the existing powers of the corporation.

Mr. RICKARDS: What you really want is the power to propose amendments to clause 42. If a mere desire to amend a bill would give a *locus standi*, the right of *locus standi* would be unlimited. A mere proposal to amend a bill does not give a *locus standi*, unless it can be shown that the bill by its enactments would injure the petitioners.

Clifford: We allege an injury inasmuch as by the changes it proposes in the Public Health Act, the clause would, we say, intensify the evil to which we are or may be exposed. The pro-

motors want something in excess of the existing law.

The CHAIRMAN: For the benefit of Bolton.

Clifford: Yes, and to the possible injury of our district, the Bolton Union.

Mr. RICKARDS: The provisions of the clause seem to be framed with a view to increase the efficiency of the Bolton hospital system; they seem to be rather an attempt to improve existing machinery.

Clifford: An improvement which may, as we fear, be carried out at our expense, by largely increasing in our midst the number of patients suffering from infectious disease. The order of the House of Commons referring these questions to the consideration of the special Committee seems to contemplate this very case. We apprehend that, without proper safeguards, our liability to infection may by this clause become much more aggravated than it can be under the existing general law; and if this matter has to be considered by the Committee, surely it is reasonable, or we may even say essential, that a public body like the petitioners, upon whom Parliament has imposed the duty of protecting the inhabitants in sanitary matters, should be able to raise the question before the Committee.

Pope (in reply): What the rural sanitary authority of Bolton want is not an amendment of clause 42, which does not affect them, but greater powers than they now have under the general law of 1875. In other words, they propose under cover of that which is purely a domestic clause, and does not in any way touch them, to ask the Committee to amend the public legislation of 1875. That legislation enables us to establish a hospital outside the borough, to increase it to any extent which may be necessary, and to fill it to the windows with patients, if we like, subject to protective powers, which the rural sanitary authority have under public legislation. Clause 42 only has effect within our own limits, enabling our medical officers to order these infectious cases to be taken to a hospital. Of course, this can only be to such hospital as we already have the power to establish and to fill. However meritorious the contention of the petitioners might be upon the general policy of the Public Health Act, they cannot raise this question upon clause 42 in our bill, which does not in any way increase our powers with regard to them, or diminish their powers with regard to us.

The CHAIRMAN: But for the order of the House of Commons, the Court would have been inclined to disallow the *locus standi*. Would you like to say anything upon that point before our decision?

Pope: No, if you think it would be convenient

in a public sense that the matter should be discussed by the rural sanitary authority, by all means let it be so, and I will withdraw my objections to the *locus standi*. The truth is our objections were taken before the order of the House was made referring these bills to a special Committee.

Mr. RICKARDS: In the case of bills affecting highways we always allow the highway authority, as representing that interest, to be heard.

The CHAIRMAN: The petitioners are the rural sanitary authority, and if any persons are entitled to be heard upon the discussion of such a question, they must be. They represent the district upon this question.

Clifford: Then, limited, of course, by our petition, we are allowed a general *locus standi* against the whole bill?

Pope: Yes, it may be taken as though we had not given our notice of objections.

Locus standi of Bolton Rural Sanitary Authority Allowed.

Agents for Petitioners, Lewin, Gregory & Anderson.

Agents for Bill, Dyson & Co.

DEVON AND CORNWALL CENTRAL RAILWAY BILL.

Petition of the GREAT WESTERN RAILWAY COMPANY.

6th July, 1882.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE-PALMER, M.P.; Sir JOHN DUCKWORTH; Sir F. S. REILLY; and Mr. BONHAM-CARTER.)

Railway—Junction with, by another Company—Crossing of, by Bridge—Land scheduled, but not to be taken—Interference with—Easement—Notices to Railway Company as Owners—Landowner's *locus standi*—S. O. 133 (in what cases Railway Companies to be heard)—Railways Clauses Act, 1863, sec. 10.

A railway company took power by the bill to construct a railway so as to form a junction with and also to cross the railway of the petitioning company. The petitioners, who had been served with notice as landowners, claimed a general *locus standi* against the bill. The promoters admitted their right to a *locus standi* limited to the questions of physical interference by the junction and crossing, as well as against a clause giving the promoters running powers over the peti-

tioners' line, but traversed their right to a general *locus standi* as landowners. They contended that it was physically impossible for them to require any of the land of the petitioners and that the utmost they did was to take an easement over the petitioners' railway by an over-bridge the piers of which would be on their own land. They also cited the Railways' Clauses Acts, 1863, section 10, as limiting the powers of one railway company over the lands of another company to cases of agreement between them :

Held, however [*Rhondda and Swansea Bay Railway Bill, infra*, cited], that there was such an interference with the land and property of the petitioners as to entitle them to a general *locus standi* against the bill.

The *locus standi* of the petitioners was objected to on the following grounds, (1) the promoters admit the right of the petitioners to be heard against the bill, so far as it relates (a.) to the crossing of, and physical interference with the railway of the petitioners by railway, No. 2 ; (b.) to the junction of railway, No. 1, with the petitioners' railway ; (c.) to the granting of running powers over the petitioners' railway ; but they do not admit the right of the petitioners to be heard upon any of the other questions raised in the petition ; (2) the alleged taking or user of, and interference with the lands, railways, works and accommodations of the petitioners, does not entitle them to be heard against the bill, except as herein-before admitted ; the alleged apprehension of abstraction of traffic (even if well-founded, which the promoters deny), is not such an abstraction as to entitle the petitioners to be heard ; (4) the petition does not allege or show that any such competition between the petitioners and the promoters would be caused by the bill, if passed, or by or from the works to be thereby authorised, as to confer a *locus standi* according to practice ; (5) the petitioners are not entitled to be heard against the power contained in the bill for enabling the company to be thereby incorporated and the London and South-Western railway company to enter into working and traffic arrangements, nor can the petitioners be in any way affected by the granting of such a power ; (6) except as herein-before admitted, the bill does not contain any provision affecting

the petitioners ; (7) the petition does not allege or show that the petitioners have any such interest in the objects and provisions of the bill as entitles them to be heard against it.

Saunders, Q.C. (for petitioners) : The bill is for the construction of a railway, and the simple question is, when a railway company propose to join the railway of another company by a junction and when they also propose to cross the line of that other railway company, serving notices upon them as landowners, has that other company an unlimited *locus standi* ? Exactly the same question was decided two days ago in the case of the *Rhondda and Swansea Bay Railways* [*infra*], and the circumstances were also precisely similar. Where the land or property of a company is taken or interfered with, the company has an unlimited *locus standi*, just as much as a private owner. S. O. 133, which appears to give a discretion to the Court with regard to railway companies does not deal with the case of a railway company referencing the land and works of another railway company. The notices served upon us by the promoters with regard to our lands were precisely those served on all landowners, and described the Great Western as owners and occupiers of the different parcels taken or interfered with.

The CHAIRMAN : According to the plan the proposed line appears to cross the Great Western railway by a bridge.

Littler, Q.C. (for promoters) : That bridge does not touch their land. Our plans show the railway unaltered. We do not appropriate the land of the Great Western, or use it in any way, while constructing the bridge. The abutments are clear of their land. What we do amounts at the utmost to an interference with their light and air, which is only taking an easement.

The CHAIRMAN : A railway company like any other landowner have rights *usque ad cælum*. They might want to put up a signal-post, or any other construction in that space.

Saunders : In addition to that, there is nothing to bind them to go over us by a bridge. They might alter their minds and take what they reference. The same question arose in the *Metropolitan Railway Bill* (2 Clifford & Rickards, 38), which was however only an extension of time bill. There are a number of other cases in which railway companies have had a *locus standi* given them not limited to the mere question of interference by junctions or crossings. Some of those cases have been decided since the alteration of the S. O., which gave a discretion to the referees. I rely however chiefly on the *Rhondda and Swansea Bay* case.

Little (in reply) : With regard to the junction, we are obliged to schedule the lands, which it is necessary for us to interfere with, in order to make the junction, and to give the petitioners notice in respect of interfering with them. But the Railways Clauses Act, 1863, section 10, expressly provides that a company shall not purchase or take any of the lands of another company for making a junction, "but only an easement or right of using the same for the purposes of the junction, unless otherwise provided by the special act or by agreement." We do not propose to take any of their land in respect of making that junction, but only to take an easement. We admit that they are entitled to a *locus standi* to discuss the question whether a junction should be effected at all, and if so, at what point.

The CHAIRMAN : A landowner's *locus standi* is not given only on the ground of taking his land. It is also given on the ground of interference with his land.

Little : The Court has held in similar cases to this, that a railway company, whose line is joined, is not in the position of an ordinary landowner. They hold the land simply as servants of the public.

The CHAIRMAN : Still they hold it as owners of it.

Little : It has been decided by the Court of Chancery, and affirmed by the Court of Appeal, against the London and North-Western railway company, that they cannot stop any person from putting up a building on his own land, so as to acquire a right to ancient lights, that is to say, they have not the same rights as to easements that an ordinary landowner has. They hold their lands for special purposes only. I refer the Court to the *Waterford, New Ross and Wexford Junction Railway Bill* (1 Clifford & Rickards, 56).

The CHAIRMAN : The petitioners had a general *locus* allowed against the deviation which affected them.

Little : They asked for a general landowner's *locus standi* against the general policy of the bill. With regard to the crossing, this case is different from the *Rhondda and Swansea Bay* case. In that case it was admitted that the land of the company must be taken and used, and that they must put their abutment on the land of the company. We do not do that here. All we do is to cross over. The two piers would not be put on their land, but merely a girder projected across. The whole width of the railway is only 50 feet. We could not possibly put our abutment upon their land, and they are not entitled to a *locus standi* on the assumption of a physical impossibility.

The CHAIRMAN : How can you project a girder across without interfering with them?

Little : They would not be entitled to a landowner's *locus standi* on the ground of interference during construction.

The CHAIRMAN : It is a permanent occupation of the space over their railway.

Sir F. S. REILLY : Your contention is that a railway company is owner of the land upon which its rails are laid only in a qualified sense?

Little : That is so, and a railway company stands in a different position to an ordinary landowner in this respect, that it can prevent its land being taken, whereas a landowner can compel it to be taken. The interference here is only by taking an easement, but it is used as a peg for hanging the real grievance on, viz., competition.

The CHAIRMAN : The Court has no doubt in this case, that the Petitioners are entitled to an unlimited *locus standi*.

Agent for Bill, *Kees*.

Agent for Petitioners, *Mains*.

EAST AND WEST INDIA DOCK EXTENSION BILL.

Petitions of (1) THE THAMES DEEP WATER DOCK COMPANY; (2) OWNERS, LESSEES, AND OCCUPIERS OF LEGAL QUAYS AND OTHER PREMISES IN THE CITY OF LONDON; AND (3) WHARFINGERS, LIGHTERMEN, AND BARGE OWNERS OF THE PORT OF LONDON.

13th March, 1882.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE-PALMER, M.P.; Sir JOHN DUCKWORTH; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Competition between Dock Companies—Between Dock Company and Wharfingers and Lightermen—S. O. 130 (Competition)—Land v. Water Carriage—Combination, apprehended, between Dock and Railway Companies—Traffic Agreements, Power to Enter into by Bill—Railway Commissioners, Revision of Agreements by—Rates, Preferential—Railways Clauses Act, 1863—Dock Rates on Lighters and Barges, exemption from—Dock Companies as Wharfingers.

The East and West India dock company promoted a bill for the construction of deep water docks at Tilbury. The bill was opposed on the ground of competition by (1) a company possessing statutory powers

to construct a deep water dock at Dagenham about thirteen miles nearer to London, (2) by the owners of legal quays, &c., in the port of London, and (3) by wharfingers, lightermen, and bargeowners, who alleged that their business would suffer if the new dock were made, inasmuch as the cargoes now discharged into lighters at the existing docks would be conveyed to London by railway, and would not find their way to the wharves or lighters of the petitioners.

It was alleged by all the petitioners that as the Railway Clauses Act, 1863, was not incorporated in the bill, the traffic agreement with the Tilbury and other railway companies into which the promoters sought to enter would not be subject to the usual revision by the railway commissioners; and they also complained of an intended combination between the dock and railway companies, the result of which would be an unfair competition with existing interests:

Held, that as regards (1), the petitioning dock company, there was something more than an improvement of existing competition, and that the petitioners were entitled to a general *locus standi* on the ground of competition; that (2 and 3) on this ground the wharfingers and lightermen were not entitled to be heard against the bill, which would not materially alter the existing conditions in the competition between land and water carriage or in the use of the petitioners' quays; but that the *locus standi* of the wharfingers in both petitions should be allowed, limited to clause 29, authorising the promoters to make agreements with the railway companies.

The *locus standi* of the Thames deep water dock company was objected to, because (1) the petitioners are not the owners of any existing dock which might be affected by the bill; (2) the bill does not create any competition with their authorised undertaking within the meaning of S. O. 130; (3) the ground of competition set up by them is inconsistent with the petition itself, which alleges that the bill will not promote healthy competition, and that the petitioners will be in a position to alleviate the rates of the port of London, while no such alleviation could possibly be effected under the bill; (4) no

property of the petitioners will be taken or affected; (5) the bill does not seek power to confirm the agreement alleged to have been arrived at on September 27, 1881, between the promoters and the London, Tilbury and Southend railway company, and does not take power to confirm any agreement which could affect the petitioners in such a manner as to entitle them to be heard; (6) the petitioners cannot be heard on the ground of the powers of the bill being prejudicial to the public interest, even if they were so, which the promoters deny; (7) no ground is disclosed by the petitioners, which, according to practice, entitles them to be heard.

The *locus standi* of (2), owners, lessees, and occupiers of legal quays, &c., was objected to, because (1) they allege no competition entitling them to be heard; (2) the agreements proposed to be sanctioned with certain railway companies will not enable the promoters to charge those companies preferential rates to the prejudice of the petitioners, as alleged; (3) the said agreements do not, in fact, sanction any amalgamation of the undertakings of the contracting companies, and the petitioners are not entitled to be heard against the confirmation of those agreements; (4) the petitioners do not represent a class, and are not entitled to be heard as individual warehouse-owners, or owners of quays; (5) they have no such interest in the objects or provisions of the bill as entitles them to be heard.

The *locus standi* of (3), wharfingers, lightermen and barge-owners, &c., was objected to, because (1) they do not represent a class; (2) the bill does not seek any further powers than those usually possessed by owners of docks, and essential to such ownership; (3) it does not create competition with the petitioners; (4) it will not affect their property, rights or interests; (5) it does not seek power to confirm, or in any manner deal with the agreement, referred to in the petition, alleged to have been entered into between the promoters and the London, Tilbury and Southend railway company, and the petitioners are not entitled to be heard in reference to any such agreement; (6) they allege no ground, which, according to practice, would entitle them to be heard.

Pembroke Stephens, Q.C. (for the Thames Deep Water dock Co.): The bill is one "to authorise the East and West India dock company to extend their dock system by constructing and maintaining a new dock, and other works in connection therewith," near Tilbury in Essex; and the preamble sets forth that the number and size of vessels, and especially of steam-vessels, frequenting the port

of London has of late largely increased and is still increasing, and that the construction of new docks lower down the Thames, admitting of the arrival and departure of the largest class of steam-vessels at all times of the tide, with increased facilities for berthing them, would attract additional shipping to the port and be of great public advantage. Our opposition to the bill is founded mainly on competition. We were incorporated so recently as last July by an Act which authorised us to construct a large deep water dock at Dagenham, capable of accommodating the largest class of steam and other vessels trading to and from the Thames. Shortly after the passing of our Act, the promoters did what they could to prevent the subscription of capital for the purposes of our undertaking, and with that view entered into negotiations for the provisional purchase of land at Tilbury, 13½ miles lower down the river than the site of our authorised dock, and also for what we contend is an illegal and exclusive agreement with the London, Tilbury and Southend railway company for the conveyance of goods between Tilbury and London. The Tilbury railway adjoins the lands we were authorised to purchase, and our Act of 1881 contains a clause enabling us to enter into agreements with this railway company. It would be the interest of the railway company, but for this bill, to make such agreements with us; but the bill contains a similar clause enabling the promoters to enter into agreements with them; and if the bill passes we shall never have an opportunity of making any agreement with the Tilbury company. It appears that the heads of a traffic agreement between the promoters and the Tilbury company were entered into on September 27, 1881, about two months after our Act obtained the Royal assent. Article 20 of that agreement provides that the special rates thereby conceded by the Tilbury company should not be conceded to any other dock company then in existence, or to any other company which might thereafter establish docks not offering similar advantages to the railway company, and the agreement contains many other provisions against public policy and in restraint of trade. We have thus been compelled to come to Parliament for protection, and to incur the expense of promoting a bill in the present session for the construction of a line from our dock to the Great Eastern railway in order that we may not be left without a railway outlet.

Pope, Q.C. (for the promoters): There is no agreement or heads of agreement.

Stephens: I will say, then, that there have

been negotiations for such an agreement. We allege that the conditions virtually made between the two companies, and the powers sought by the promoters in this bill, will tend to maintain the existing onerous dues of the port, and virtually continue a monopoly in the hands of the East and West India dock company, and that the main object of the Tilbury docks is to intercept vessels destined for our deep water dock at Dagenham, and to establish an unfair competition with us. Clause 29 of the bill, which authorises the promoters to enter into agreements with the Tilbury company, does not contain the usual provision that the agreement shall be subject to revision by the railway commissioners, so that the promoters may make agreements with the Tilbury company without interference from us or anybody else.

Pope: If that is so by any omission on our part, I will undertake it shall be remedied; that is to say, I will concede a *locus standi* to the Thames deep water dock company against clause 29.

Stephens: With regard to the question of competition the case is governed by the *Hundred of Hoo Railway Bill, Petition of Medway Docks Company* (2 Clifford & Rickards, 257); and the *Bristol Port and Channel Docks Bill* (3 Clifford & Rickards, 15).

Balfour Browne (for owners, lessees and occupiers of legal quays, sufferance wharves and warehouses, and traders of the port of London): Clause 29 will authorise the promoters to enter into agreements with the Great Eastern, the Tilbury, and the Blackwall railway companies, which will enable them, by means of rebates, drawbacks, discounts and other allowances, to give those companies preferential tolls and rates, thereby creating an unfair competition with us. If the promoters now undertake to incorporate the Railway Clauses Act, 1863, so as to make any agreement entered into under clause 29 subject to revision by the railway commissioners, the petitioners will have nothing more to say.

Pope: The bill shall be so amended, and you shall have a *locus standi* against clause 29 to see that the amendment is made.

Pembroke Stephens, Q.C. (for wharfingers, lightermen and bargeowners of the port of London): We complain of the unfair competition to which we may be exposed under the bill, inasmuch as the promoters propose to intercept by means of their dock at Tilbury the goods brought by all the large ships mentioned in the preamble, to place these goods on the railway, and carry them by exceptional rates to and from London. We shall thus be deprived of a large portion of our business; and the wharves, warehouses

and machinery, the barges and the lighters, in which we have invested large sums of money, will be greatly deteriorated in value. A dock at Tilbury will act prejudicially on our business, for it is evidently intended to throw the carriage of merchandise upon the railways, and the proposed combination between the dock company and the railways would be most unjust to us. Again, by clause 16, it is proposed to exempt lighters and barges from rates while *bond fide* engaged in discharging or receiving ballast or goods, but it appears that, as soon as the discharging or receiving is completed, the lighters and barges must either leave the proposed dock, whatever the state of the tide or weather, or be charged with rates, and we allege that in practice this regulation will prove harsh and sometimes dangerous. By clause 17 the company appear to contemplate undertaking all the duties of wharfingers in respect of wharfage, unshipping, landing, relading, piling, housing, weighing, coopering, sampling, unpling, unhousing, watching, shipping, loading and delivering goods, and charging rates, rents and sums for all such services.

Mr. RICKARDS: Clause 16, of which the petitioners complain, seems to be an exemption.

Stephens: The question would arise whether we were "*bond fide* engaged in discharging or receiving ballast or goods." If from stress of weather we were obliged to remain in the docks, or to come in again after having gone out, we should be liable to be rated at the discretion of the company.

Pope: The words "*bond fide* engaged" are a sufficient protection for you.

Mr. RICKARDS: The petitioners should not look this gift horse in the mouth. The clause gives them an exemption, so long as they are engaged in their proper business.

Stephens: Then the petitioners say they will be disturbed in carrying on their business by an unfair competition on the part of the promoters and the railway company.

Mr. RICKARDS: The case of the petitioners is like that of carriers complaining of a new railway, because they would be obliged to provide vans and waggons of larger size.

Stephens: Hardly, because this is land carriage against water carriage.

Pope, Q.C. (in reply): This is a bill to authorise the construction, not of a railway, but a dock. It does not originate a land competition against the existing river-side interest. We do not seek to alter the *status* of the lightermen in dealing with cargoes that enter the docks. We shall leave to the owner of the vessel who discharges his cargo precisely the same option that he has now in the East and West India docks. He may

either send his cargo to the warehouse by land or accept the services of a lighterman and send it by water. No doubt his decision would largely depend upon the question which is the cheaper mode of conveyance. But the construction of this dock would not affect that question, nor would any agreement between the dock company and the railway companies. The utmost that could happen would be a reduction in the cost of land carriage, the result of which might be that the lighterman would have to reduce the cost of the water carriage, and so perhaps compete successfully with the railways.

Mr. RICKARDS: The petitioners refer to a possible combination between the dock company and the railway companies for the purpose of reducing the cost of land carriage from the docks.

Pope: The dock company do not seek any power with regard to railway rates. The railway companies might reduce their rates totally irrespective of any agreement with the dock company. Clause 16 is really an exemption in favour of lightermen, enabling them to come alongside the discharging vessel in the docks without paying dues, just as the railway waggons do, or just as if the vessel were riding in the river; and the question how, or at what cost, the cargo is to be got to London would be one depending on competition—not between the dock company and the lightermen, but between the railway company and them.

The CHAIRMAN: The petitioners say that the construction of your dock will enable the railway to compete with the water carriage, and that the cargoes which have hitherto had to be unloaded and brought to London by water, will now have 13 miles less water carriage.

Pope: I dare say if you had a deep water dock at the mouth of the Thames many large vessels which now find the navigation of the Thames difficult would never come up the Thames, and if we were dealing with the question of docks on the Thames that might be a relevant argument. But the ships that now go up the Thames and enter the East and West India docks do not all discharge into lighters. They have the option of sending their cargo by rail, or land conveyance, or by lighters, and so they will have in this dock. If lightermen choose to navigate the Thames so far down, shipowners will have just the same option of dealing with them as in the existing docks.

Mr. HINDE-PALMER: What you are now saying applies to the lightermen. What do you say to the wharfingers who signed the petition?

Pope: They cannot bring a vessel alongside their wharves for the purpose of discharging cargo there; the cargo must be discharged into

lighters before it reaches their wharves, and therefore they appear here as lightermen rather than as wharfingers. Petitioners cannot acquire a *locus standi* by using a particular word which does not represent the real nature of their interest.

The CHAIRMAN: I suppose you would concede to any wharfingers in the second petition the same right to appear against clause 29 as you gave to the wharfingers in the first petition?

Pope: Yes. With regard to the Thames deep water dock company, the question is a pure question of competition. In the *Hundred of Hoo Railway* case a perfectly new competition was created. Here there is only an extension of the East and West India dock system. Suppose the promoters had bought the whole of the Isle of Dogs for the purpose of constructing deep water docks, the petitioners could have had no *locus standi*; it would have been only an improvement of existing competition. It makes no difference that, instead of extending their docks near the site of those now existing, the East and West India docks company go lower down the river. The railway between the two docks is nothing but a connecting link between two parts of the same undertaking.

The CHAIRMAN: Put it the other way. Suppose this had been a project of an entirely new company.

Pope: Then the argument would have been that the proposed docks were too far off to make the competition a serious one. It is 13½ miles nearer the mouth of the river.

The CHAIRMAN: I think we must allow a general *locus standi* on the ground of competition to the Thames deep water dock company. With regard to the other petitions, there is some difficulty in allowing two sets of wharfingers to be heard.

Pope: The opposition of the two sets of petitioners may be consolidated, or may be dealt with separately as they may be advised. It is understood that the *locus standi* will be disallowed of lightermen who are not wharfingers.

Stephens: Besides clause 29, we also complain of clause 17.

Pope: That only relates to wharfage in our dock. We must of course be able to carry on the business of wharfingers there.

The CHAIRMAN: The petitioners must be satisfied with a *locus standi* against clause 29.

Locus standi of (1) The Thames Deep Water Dock Company *Allowed*.

Locus standi of (2) Owners, Lessees, and Occupiers of Legal Quays and other Premises in the City of London, *Allowed* against Clause 29.

Locus standi of (3) such of the Petitioners signing the petition of Wharfingers, Lightermen, and Bargeowners of the Port of London as are wharfingers, *Allowed* against Clause 29.

Agent for Petitioners (1 and 3), *Bell*.

Agents for Petitioners (2), *Wyatt & Co.*

Agents for Bill, *Sherwood & Co.*

EAST AND WEST YORKSHIRE UNION RAILWAYS BILL.

Petition of THE GREAT NORTHERN AND MANCHESTER, SHEFFIELD AND LINCOLNSHIRE RAILWAY COMPANIES.

20th March, 1882.—(Before Mr. PEMBERTON, M.P., Chairman; Sir JOHN DUCKWORTH; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Railway—Junction with, by another Company—Running Powers into, and User of Station—Physical Interference—Injurious Affecting—General Locus Standi Claimed—S. O. 133 (in what cases Railway Companies to be heard)—Discretionary Power of Referees under.

The bill authorised the construction of a railway so as to form a junction with the line of one of the companies, who were joint petitioners, and also conferred powers upon the promoters for running over and using a station upon a railway, of which the petitioners were joint owners. The petition did not deal with the question of competition, but complained of the physical interference with, as well as injurious affecting of, the petitioners' railways under the powers of the bill, more especially by the user of the station, and a general *locus standi* was claimed upon these grounds under S. O. 133:

Held, however, that the injury complained of was of such a nature as only to entitle the petitioners to a limited *locus standi* against the bill.

The *locus standi* of the petitioners was objected to, because (1) the petition does not allege or show that any competition between the petitioners and the promoters would be caused by or result from the bill if passed, or by or from the works to be thereby authorised;

(2) the bill contains no provisions for taking or using any of the lands, railways, stations or accommodations of the petitioners, or for granting other facilities affecting the petitioners, except in the matter of the powers for running over and using the Wakefield station of the petitioners; (3) the promoters admit the right of the petitioners to be heard against clauses 49 and 50 of the bill, so far as they relate to such running powers; (4) the petitioners have no right to be heard against clause 52 of the bill, inasmuch as the powers proposed to be conferred by that clause are permissive only; (5 and 6) the promoters deny the right of the petitioners to be heard upon any of the allegations of their petition or against any of the provisions of the bill, except as herein-before admitted.

Pope, Q.C. (for petitioners): By the bill it is proposed to make a line called the East and West Yorkshire Union railway, running from the Hull and Barnsley line into the Great Northern line at Ardesley, forming a junction there with the Great Northern, and going thence to the Westgate station at Wakefield of the West Riding and Grimsby (a station belonging to the petitioners as joint owners of the West Riding and Grimsby). No competition is alleged in the petition, and therefore that is a question that cannot be gone into. The Lancashire and Yorkshire and the Great Northern companies who have a more direct access to Hull will be able to raise that question of competition more fully, so that the real question here is whether we have a right to a general *locus standi* in respect of our station, into which the promoters propose to run. The promoters say that we have the right to be heard only against so much of the bill as gives the promoters the user of our station, whereas we say that we have an unlimited *locus standi*. S. O. 133, as it formerly stood, gave an unlimited *locus standi* to a company with whose line junctions were formed, or whose stations were used by another company, but as the S. O. has been altered, it is in the discretion of the Referees either to give an unlimited *locus* to the petitioning company, or to give them a *locus* only in respect of the provisions of the bill which authorize the junction, or the user of the station of the petitioning company. I am not aware of any case in which they have limited the *locus* of a company whose station was entered by another company. We ask the Court to give us a general *locus standi* in this case.

Rodwell, Q.C.: If ever there was a case pointed at by the S. O. as altered, this is the case. The test is the nature of the injury likely to be done by the act of the party petitioned against. Here there is no competition

alleged, so the question is the mere question of the physical interference with their station. The question is a mere local question. The case of the *Lansdowne Road, Rathmines, &c., Tramway Bill* (2 Clifford & Rickards, 177) is in point, and in the *Waterford and New Ross* case (1 Clifford & Rickards, 56) only a limited *locus* was given.

The CHAIRMAN: We Allow the Petitioners a *locus standi* against Clauses 49 and 50.

Agent for Bill, *Rees*.

Agents for Petitioners, *Dyson & Co.*

EASTERN AND MIDLANDS RAILWAY (AMALGAMATION) BILL.

Petition of (1) THE GREAT EASTERN RAILWAY COMPANY.

3rd April, 1882.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE-PALMER, M.P.; Mr. PARKER, M.P.; Mr. MELDON, M.P.; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Railways Amalgamation — Independent Local Railways — Through Route — Competition — Diversion of Traffic — Avoidance of Petitioners' Station — Loss of Terminal Rates — Running Powers over Branch Line — Extension of, to Companies proposed to be Amalgamated — Petitioners as Creditors of one of Amalgamating Companies.

The Bill authorised the amalgamation of five local and independent companies, two to the west of the central station of Lynn, and three to the east. The petitioners were a railway company, who possessed railways, both to the east and west of Lynn, in competition with different railways of the five companies proposed to be amalgamated. They complained that a new competition would be created by the amalgamation, as the companies east of Lynn would no longer send traffic by the petitioners' line to the west of Lynn, and conversely of traffic arising east of Lynn, but would consign it by the lines of the companies to be amalgamated on both sides of Lynn. They also claimed to be heard against the bill as owners of a station at Lynn, now used by some of the amalgamating companies, but

which would, by the construction of a line under another bill promoted in connection with the present bill, be avoided by the amalgamating companies, thereby depriving the petitioners of terminal tolls, &c., which they now enjoyed for the use of the station. They further claimed to be heard as creditors of one of the amalgamating companies, but based their principal claim upon the ground of competition :

Held, that they were sufficiently affected by the bill (apparently in the matter of competition), to be entitled to a *locus standi* against it.

The *locus standi* of the Great Eastern railway company was objected to, because (1) the petitioners appear to claim a hearing on four grounds, viz., (a) competition; (b) the avoidance of Lynn station; (c) interference with an alleged debt of £10,000; (d) deprivation of traffic; (2) as regards competition, it is not proposed by the bill to authorise any new railways, nor can any greater competition with the Great Eastern railway company result from the passing of the bill than now exists; (3) as to the avoidance of Lynn station, the injury which the petitioners apprehend will result (if at all) not from anything contained in this bill, but from the authorization, if Parliament think fit, of a railway proposed by the Lynn and Fakenham Railway Bill, against which the petitioners have presented a petition, and are entitled to be heard; (4) as regards the £10,000, if it be a debt due by the Midland and Eastern railway company, the position and rights of the petitioners in relation thereto are in no way affected by the bill. If it be, as they assert in the petition, a claim upon the whole undertaking of the Midland and Eastern railway company, all their rights and remedies are expressly reserved by clause 19 of the bill, and what the petitioners apparently desire is to have a greater security for the payment of the said sum than they now possess; (5) the bill will not deprive the petitioners of traffic, which they would have but for the amalgamation. Nor will the amalgamation affect any vested rights of the petitioners in any traffic or otherwise, so as to entitle them to be heard; (6) the other matters referred to in the petition are not such as to entitle the petitioners to be heard according to practice.

Pember, Q.C. (for petitioners): The bill is one to incorporate a new company called the Eastern and Midlands railway company, formed by the amalgamation of the railways of the Midland

and Eastern, the Peterborough, Wisbeach, and Sutton Bridge, the Lynn and Fakenham the Yarmouth and North Norfolk (light) and the Yarmouth Union companies. The railways of the two first-named companies extend from Peterboro' and Bourne on the west, to Lynn, in the county of Norfolk, and the railways of the three last-named companies, partly completed, and partly in course of construction, extend from Lynn to Norwich and Yarmouth on the east. The Great Eastern company have lines from Peterborough to Lynn, and from Lynn to Yarmouth *viâ* Swaffham, Dereham, and Norwich, and will therefore be in competition with the company proposed to be formed from what are now independent companies for a distance of about 90 miles in one length. The consequence of this amalgamation will be that all traffic coming from the west to Lynn and destined for Norwich and Yarmouth, and intermediate places, will be consigned to the amalgamated railways on the east of Lynn, whereas we have hitherto carried a share of it by our railway between Lynn and Yarmouth, and the same will hold good, *mutatis mutandis*, of traffic coming from the east of Lynn and destined for Peterborough and places beyond. For these reasons we are entitled to be heard on the ground of competition and loss of traffic. But there is a further injury to be inflicted on the Great Eastern company. By another bill the Lynn and Fakenham company have come for a line between Grimston Road and Lynn, by means of which the Lynn and Fakenham, and the Midland and Eastern, and the Peterborough, Wisbeach, and Sutton, will be able to avoid using our station at Lynn, into which they have power to run, and for which they pay us tolls, rates, and terminals. If this new loop line is made, and these companies are amalgamated, the Lynn and Fakenham and the other lines will not use our Lynn station, and we shall be deprived of those tolls and rates. Unless we are heard against this amalgamation bill we shall not have much chance of throwing out that little loop, because if the amalgamation bill is passed behind our backs, it will be urged with great force that the little loop is an essential part of the amalgamation. We also allege that the Midland and Eastern having the power, which the Lynn and Fakenham have not, of running over our harbour branch at Lynn, the bill will let in the latter and alter our *status* in that respect. Another point in the amalgamation to which we object is, that by the bill it is proposed to keep separate accounts of the receipts and expenditure on the railways of each of the amalgamated companies, and the bill confers no rights upon creditors of any of the companies to

proceed against the amalgamated company as is usual in such cases. This is serious for us, as we are judgment creditors of the Midland and Eastern company to the amount of £10,000, and clause 21 of the bill provides that all debts and liabilities of the Midland and Eastern company should be paid out of the Midland and Eastern revenue account, and not out of any other revenue of the company, which we allege will have the effect of preventing us from enforcing our claim to the payment of that debt, as we are now entitled to. With regard to the question of competition, upon which we base our principal claim to a *locus standi*, the series of cases reported in 1 *Clifford & Stephens*, 87—105, show the rights of petitioners in the position of the Great Eastern company against amalgamation bills.

Jones (for promoters): With regard to the amalgamation with the Lynn and Fakenham of the Yarmouth and North Norfolk company, that matter is practically *res judicata*, because under an amalgamation bill of last session (which failed so far as the amalgamation was concerned, because the Standing Orders had not been complied with), Parliament, notwithstanding the opposition of the Great Eastern company, authorised a working agreement under which the two companies could do everything which is proposed by the bill.

The CHAIRMAN: At present the Lynn and Fakenham company have power to use the Great Eastern station at Lynn. If this amalgamation were to take place another company than the Lynn and Fakenham would have the power to use it.

Jones: The power they would have under the amalgamation as regards that would not be any greater than they have now. The traffic would be the same, and the powers would be the same. With regard to the question of competition, no new competition will arise under the bill. There is competition now between Lynn and Peterborough, as between the Great Eastern and the Midland company, who work the Peterborough, Wisbeach and Sutton Bridge line. If that competition is intensified as between the Great Eastern and the amalgamated undertaking, it would only be so in the smallest possible degree. The Lynn and Fakenham can now, if they choose, send traffic by the Midland and Eastern, or by the Peterborough, Wisbeach and Sutton, in competition with the Great Eastern. With regard to the £10,000 owing to the Great Eastern company, clause 19 provides that all debts and obligations affecting the undertaking of the Midland and Eastern company at the time of the amalgamation shall, until satisfied, continue to be a charge upon the said undertaking, and

therefore the petitioners will be in just the same position after the amalgamation as before. With regard to running over the harbour branch, that right belongs to the Midland and Eastern company, and perhaps to the Peterborough, Wisbeach and Sutton, but by the terms of the working agreement the right is vested in the Great Northern and the Midland companies, and therefore the Great Northern and the Midland companies, who have that right now, will continue to have it.

The CHAIRMAN: We are of opinion that the *locus standi* of the Petitioners should be Allowed.

Agent for Petitioners, *Rees*.

Petitions of (2) THE MIDLAND RAILWAY COMPANY; and (3) THE GREAT NORTHERN RAILWAY COMPANY.

Railways Amalgamation—Working Agreement—Interference with—Railway Company as Sole and Joint Workers of Railways Proposed to be Amalgamated—Working Company as Guarantors of Interest upon Debenture Stock—Creditors, substitution of new, for existing—Injurious affecting—New Interests—Alteration in status of Working Company—Saving Clause, Insufficiency of.

The bill proposed the amalgamation of five small railways, two of which were worked by the petitioning railway companies, in the case of one railway by one of the petitioning companies solely, and in the case of the other by both petitioning companies jointly, the working agreements in both cases being exclusive and in perpetuity, and the working companies guaranteeing the payment of a minimum sum to the companies, whose lines they worked, irrespectively of traffic receipts. The petitioners complained that the amalgamation proposed by the bill would affect the traffic of the railways worked by them, in which they had an exclusive interest, making the working of these railways a matter of difficulty; would introduce fresh parties to the agreements, practically substituting different creditors for those to whom they were now liable under the guarantee; and by creating new interests in the consignment of traffic over the railways which they worked, would

injure their position in relation to the agreements. The bill contained a clause saving their rights as the working companies, but to this they objected as insufficient in view of the new interest created in the railways by the proposed amalgamation :

Held, That the existing *status* of both the petitioning companies was so affected by the bill as to entitle them to be heard against so much of it as related to the amalgamation of the railways in which they were interested under the working agreements.

The *locus standi* of (2) the Midland railway company was objected to, because (1) they apparently base their claim to be heard against the bill on their rights under an agreement referred to in paragraph 6 of the petition, and an assumed interference with those rights. But those rights whatever they may be are not affected, the proposed amalgamation only taking effect subject to the rights of the petitioners in the Peterborough and Midland and Eastern railways; (2) it is alleged in the petition that this protection is illusory and insufficient, because the bill will change materially the present interests of the three companies proposed to be united, but the petition does not show nor is it the fact that such will be the case so as to affect the interests of the petitioners; (3) paragraphs 11 and 12 of the petition appear to mean that the amalgamation will stop the development of traffic over the Peterborough and Midland and Eastern railways, and thus affect the petitioners. The apprehension of the petitioners is based on a misapprehension of the effect of the bill, and the Great Northern company, who are in precisely the same position as the petitioners, complain in their petition that they will be injured by the development of the traffic upon those railways which the amalgamation may bring about; (4) whatever interest in the development of traffic over those railways the petitioners and the Peterborough company respectively had before, they will have after the amalgamation. Moreover by the amalgamation the Peterborough company will become part of a company, which will not only have an interest in the development of the traffic over those railways, but will have at least as much power to produce such development as the Peterborough company. If the amalgamation has any effect upon the traffic on these lines and upon the petitioners, it is more likely to produce the effect suggested by the Great Northern railway company than

that suggested by the petitioners; (5) at the present time neither the petitioners nor the Peterborough company can in any way influence the traffic by the Great Eastern railway company's route east of Lynn (referred to in the petition) so as to direct it over the Peterborough and Midland and Eastern railways, the Great Eastern railway company having an independent route to Peterborough. The amalgamated company will contain constituent parts now interested not at all in the traffic of the Peterborough and Midland and Eastern railways, but which will after the amalgamation have an interest therein in addition to that of the Peterborough and Midland and Eastern companies; (6) paragraph 13 suggests that it may become the interest of the amalgamated company to endeavour to convey traffic over the Peterborough and Midland and Eastern railways, which might affect the petitioners. The amalgamated company will not become possessed by the amalgamation of any further rights or powers than those two companies now respectively have; (7) the petition discloses no ground for a hearing according to practice.

The *locus standi* of (3) the Great Northern railway company was objected to, because (1) if the right to be heard be claimed on the ground that the petitioners have control over all future works on the railways (i.e., the railways between Bourne and Lynn) (paragraph 2 of the petition), the promoters deny that the petitioners have that control. But whatever control they may have (if any) is neither restricted nor in any way affected by anything contained in the bill; (2) referring to paragraph 4 of the petition the promoters deny that any consent or concurrence of the petitioners is either expressly or by implication made a condition precedent to the transfer of the undertaking by its owners, while the object of the bill is not so much the transference of the undertaking to other hands as the admission of new partners in its management; (3) the interests of the petitioners and the Midland railway company in the Midland and Eastern railway are identical. The petitioners complain (paragraph 5) that the amalgamation will be unfair to them because it will bring traffic on the Midland and Eastern railway. Their partners, the Midland railway company, complain in their petition that it will take it away. If the objection of each does not answer that of the other, the divergence of opinion suggests the conclusion that neither will be materially affected, and while the promoters dispute the contention of the Midland railway company, they submit that the contention of the petitioners, even if well founded, affords no ground

for complaint; (4) such traffic would not affect the petitioners injuriously, and if it did, the petitioners are under statutory obligations to work it; the better development of traffic, and the increased expenditure which it would involve having been expressly contemplated under the agreements referred to in the petition; (5) paragraph 6 of the petition suggests that it may become the interest of the amalgamated company to endeavour to convey traffic over the Midland and Eastern railway, which might affect the petitioners, but it is not alleged, nor is it the fact, that the rights and powers as to the conveyance of traffic over their railway are in any way altered by the bill. The amalgamated company cannot by the amalgamation become possessed of any further rights or powers than the Midland and Eastern company have; (6) The proposed amalgamation is to take effect only subject to such rights as the petitioners possess in or over the railways of the Midland and Eastern railway company. Nor does the petition show that if the relations between the petitioners and the Midland and Eastern railway company will necessarily be varied by the proposed amalgamation, such variation will affect the petitioners in such manner as to entitle them, according to the practice of Parliament, to be heard on their petition against the bill.

Bidder, Q.C. (for petitioners (2)): We have nothing to urge against so much of the bill as proposes an amalgamation of railways to the east of Lynn, but we claim to be heard against so much of the bill as proposes to amalgamate either with each other, or with the lines to the east of Lynn, the two railways called respectively the Peterborough, Wisbeach and Sutton railway, and the Midland and Eastern railway. First, as regards the Peterborough railway, we are the sole workers in perpetuity of it, except for the purpose of receiving the balance of revenue, if there is any, and dividing it amongst the shareholders. We are, to all intents and purposes, the owners of the line as far as management, maintenance, and working are concerned. With regard to the Midland and Eastern railway, we are precisely in the same position, only that we share the position with the Great Northern railway company, who are jointly with us the sole workers in perpetuity of it. The promoters say that we are sufficiently protected by Clause 18, which contains the proviso, "subject nevertheless, to such rights as the Midland and Great Northern railway companies, or either of them respectively, possess in or over the railways of the Peterborough and Midland and Eastern railway companies, or any part or parts of the undertaking, as by this Act defined,

of those companies or either of them." That is, in fact, an admission of our right to be heard against the proposed amalgamation, and we have a right to be heard before a committee to discuss such a clause. The following allegation in our petition shows how we may be seriously prejudiced by the amalgamation:—"Both the Peterborough railway and the Midland and Eastern railway are laid with single lines of rails, and can, as a practical question, be only worked and used by one railway company, and for this reason your petitioners and the Great Northern railway company have divided the working of the Midland and Eastern railway between them, so as to work that railway in the most convenient and economical manner. If the proposed amalgamation takes effect, it may become the interest of the amalgamated company to endeavour to convey traffic themselves over the Peterborough and Midland and Eastern railways, which cannot be done without greatly increased cost and inconvenience to your petitioners, and delay and disadvantage to the public in the working of those railways." To introduce a stranger over those single lines, would be to introduce intolerable confusion and risks of accidents and would involve extra expense. Neither of these railway companies has rolling stock of its own, and therefore cannot run a train in competition with us, but the proposal of the bill is to amalgamate those undertakings with companies to the east of Lynn, who have their own rolling stock, to whom therefore it would be competent any day to carry traffic westward of Lynn, and so render our working of the two railways west of Lynn dangerous and expensive. There is another ground on which we are entitled to be heard, viz., that by our agreement with the Peterborough company, we take upon ourselves the obligation in perpetuity to maintain, work, and manage the Peterborough line, and we are entitled to 50 per cent. of the divisible receipts, but we are under another obligation to pay debenture interest out of the gross receipts, be they great or small. As regards the Midland and Eastern, in which we are jointly interested with the Great Northern, the receipts are divided in like manner in the proportion of 50 per cent., but we jointly take upon ourselves to pay £15,000 yearly, whatever the revenue may amount to. At present, the owners of these two railways have no interest by which route traffic arising east and going west of Lynn is sent, but when the amalgamation takes place, they may divert as much of the traffic as they can to one of these routes, leaving us saddled with the obligation to pay in one case £15,000, and in the other the debenture interest. Again, at present,

the agreement between ourselves and the two companies would only be enforced by them with reference to their own interests, but when these two companies west of Lynn are amalgamated with those east of Lynn, entirely new interests will be introduced, and the spirit in which those two companies enforce those agreements will be entirely different to that in which they are now enforced by them.

Pope, Q.C. (for petitioners (3)): We are workers in perpetuity upon certain terms of the line from Bourne to Sutton Bridge, and that line is just as much for practical railway purposes a part of the Great Northern system as the line from London to York, and this bill amounts to a bill for amalgamating a piece of Great Northern line with the Lynn and Fakenham railway. That is a proposal to which we have a right to object. We work the line and maintain it, and we pay them a minimum of £15,000 a year, and they are our creditors to that amount. They have no right to assign somebody else to us as our creditors without our being heard.

The CHAIRMAN: The case appears more analogous to a case of rent. You can assign property subject to a lease without the tenant having the right to say anything about it.

Pope: A railway company is not in the position of an ordinary owner of property, but is obliged to obtain the consent of Parliament before dealing with its undertaking. In cases of amalgamation the Court has always shown the greatest latitude in hearing petitioners in opposition to the bill. Our interests as sole joint workers in perpetuity of the Midland and Eastern company are identical with those of the Midland company, and the arguments urged in favour of the Midland company equally apply to our case.

Jeune (for promoters): It is true that the Midland and Great Northern railway companies have the exclusive right of working the Midland and Eastern and the Peterborough companies' railways, but those rights are expressly reserved by the bill, and will remain unaffected. With regard to what was said about the danger and additional expense that would be caused by the trains of the amalgamated undertaking running upon those lines, which are single, we should not be able to introduce our trains upon those lines. This amalgamation is in point of fact only an amalgamation of capitals. That will not affect the petitioners.

The CHAIRMAN: The Midland and the Great Northern companies will be bound to account to some one else than they originally contracted with.

Jeune: No new obligation is put upon them. The only difference is that another party will have an interest in the paying over of the money by the working company. It is not the introduction of a new partner.

The CHAIRMAN: Under the existing agreement would not the Peterborough company have a right to see to the proper execution of the agreement? Would not they be able to compel the working company to work the line in a proper way? Will not the bill give the working company a new master?

Jeune: But their duties and obligations towards the new master will be exactly the same as they were towards the old master.

The CHAIRMAN: The petitioners must still pay £15,000 a year to you whether you send any traffic over their line or not.

Jeune: They will have the same control over it when they get it as they have now. No cases have been cited on behalf of the petitioners in which a working company has been heard against an amalgamation.

The CHAIRMAN: All these cases depend so much upon their own circumstances that one is scarcely a precedent for another.

Jeune: This no doubt introduces another party, to whom incidentally an interest is given to see that the agreement is performed, but inasmuch as the working companies are bound to perform the agreement in the best possible way as it now stands, they cannot be heard to say they object to someone being introduced who may enforce the agreement more stringently.

The CHAIRMAN: We think that the *locus standi* of the two petitioning companies should be allowed.

Jeune: I should ask the Court to limit the *locus standi* of the petitioners to the question of the amalgamation of the lines in which they are interested.

Pope: I will undertake that the Great Northern company will not intervene in the question of amalgamation east of Lynn.

A similar assurance was given on behalf of the Midland railway company.

Limited *locus standi* of both Petitioners accordingly Allowed.

Agents for Midland Railway Company, *Beale & Co.*

Agents for Great Northern Railway Company, *Nelson, Barr & Nelson.*

Agents for Bill, *Dyson & Co.*

EDINBURGH SUBURBAN AND SOUTH-SIDE JUNCTION RAILWAY BILL.

Petition of THE SCOTTISH HERITAGES COMPANY.

20th March, 1882.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. PARKER, M.P.; and Mr. RICKARDS.)

Landowners—Superiors and Feuars—Railway—Partial Substitution of new for Original Line—Previous Act—Consent and Withdrawal from opposition of Petitioners—Conditions of, alleged breach of—Absence of Formal Agreement—Injurious Affecting—Public Footpath, closing of—Obstruction of Access to Petitioners' Estate—Road Authorities.

The bill sanctioned the deviation of a railway authorised by an Act of 1880. The petitioners were a land company with extensive rights as superiors, whose estate was traversed by the railway authorised in 1880, to the Bill for the construction of which they had given their support. The present deviation involved a more circuitous route, and was in other respects less advantageous to the property of the petitioners, which they sold for building purposes. There was no deed showing the conditions of the withdrawal of the petitioners' opposition to the bill of 1880, but a letter was produced in evidence of an understanding arrived at by the parties. The petitioners contended that having waived their right to be heard as landowners against the bill of 1880 upon certain conditions, they had a right to be heard against the present bill, which violated those conditions. They also claimed a *locus standi* on the ground that the bill empowered the promoters to stop up a public footpath forming an important access to certain parts of their estate. It was urged on behalf of the promoters that no such power was contained in the bill; that if it was a public path, the road authorities were the proper parties to appear; and that the injury to access apprehended by the petitioners was not of such a nature as to support a claim to a *locus standi* against the bill:

held, that the petitioners were not entitled to be heard upon any of the grounds advanced.

The *locus standi* of the petitioners was objected to, because (1) the bill does not take power to take or injuriously affect any lands or interests of the petitioners; (2) neither as landowners nor in any other character are the petitioners entitled to be heard against the proposed abandonment of a small portion of the promoters' line or the construction in its place of the works proposed by the bill; (3) the promise alleged in paragraph 4 of the petition is denied, but even if made, cannot control the enactments of the promoters' Act of 1880, or entitle the petitioners to be heard against any of the provisions of the present bill; (4) the petitioners are not entitled to represent their feuars in opposition to the bill upon any of the grounds stated in the petition; (5) the road referred to in the petition is a public road, and is not vested in the petitioners, who do not represent the public road authority, or any other authority in the district, and whose interest (if any) in the said road is no greater than that of any individual member of the community. The petitioners are not entitled to be heard to represent any public interest in the said road, or to object to any power to shut up or discontinue the same as a public road, or even as a public footpath; (6) the petitioners do not state, nor is it the fact that any meeting of the public, or of the inhabitants of the district interested in the road has been held, or that they represent or are entitled to represent them or even the general body of proprietors in the immediate neighbourhood of the said road; (7) neither the public nor the petitioners seeking to represent them are entitled to oppose a private bill of this character before a committee; (8) the petitioners are a corporation, and are incapable of using the road as one of the public; (9) no *solum* or property at present belonging to the petitioners in the said road will be taken, or prejudicially affected by the bill. If the petitioners own any *solum* in the portion of the road in question (which is denied) such *solum* was always subject to the public rights, which rights only will be affected by the bill; (10) a part of the portion of road to be shut up has already been acquired by the promoters under their Act of 1880, and what is now proposed is a necessary part of past legislation; (11) the petition does not disclose any interest in the provisions of the Bill entitling the petitioners to be heard according to practice.

Saunders, Q.C. (for petitioners): The company of the promoters was formed in 1879 for the purpose of making a railway around the City of Edinburgh, connecting the railway of the North British railway company on the west side of the city with their railway on the east

side, and thus completing a suburban railway route round the city. The line was promoted in the interest of the North British, although by an independent company. The railway thus projected passed through the estate of the petitioners, and the promoters solicited and obtained our support on the promise that it would be completed in the line proposed within two years from the date of its sanction by Parliament, and also that a frequent or regular train service would be kept up thereon, so as to give to the petitioners and the purchasers and feuars of their lands full and constant access to and from every part of the City of Edinburgh. Upon that footing we supported the bill, and abstained from joining the opposition thereto of various other landowners. The bill received the sanction of Parliament in 1880. The present bill empowers the promoters to make some important deviations from their proposed scheme of 1880, by which they will abandon the eastern portion of that railway and substitute new lines joining the existing lines at points considerably further to the east, thus adding about a mile to the length of the circular route, and to the time occupied in reaching all points in the city to which access is got by the eastern portion of the suburban railway, as well as increasing the railway fares to and from our property. This change will, we apprehend, alter the character of the railway from a passenger into a goods line. It is also proposed to allow a period of five years for the completion of the substituted lines in lieu of two years granted by Parliament for the completion of the abandoned portions, thus materially injuring the petitioners by postponing the period at which our feuars can obtain access to all parts of Edinburgh, on the faith of which the petitioners consented to the passing of the Act, and the intersection of our estate by the railway. We have a further complaint against the bill in that it is proposed to shut up and discontinue as a public road, or even as a public footpath, a portion, upwards of one quarter of a mile in length, of the road called the Tipperlinn-road, and to extinguish all rights of way over or along the same. The road passes through our estate, and the *solum* of that portion belongs to us. The road forms an important and necessary access to our estate, which will be seriously affected by its being closed.

Mr. RICKARDS: Is any breach of agreement complained of?

Saunders: We have an agreement, so far as it consists of a telegram, afterwards confirmed by a letter, although there is no agreement under the seal of either company. The petitioners, having been invited to give evidence in favour

of the bill, were anxious first to ascertain the amount of train service on the proposed railway, and the petitioners' architect as the result of an interview with the manager of the promoters, telegraphed that the manager would guarantee one train per hour each way over the line, and the manager afterwards wrote to confirm the telegram in express terms. [Letter produced.] Though not on all fours, the case of the *North Eastern (Additional Powers) Bill, on the Petition of Bolckow, Vaughan and Co.* (1 Clifford & Rickards, 107), bears on the question.

Mr. RICKARDS: You had a *locus standi* as a landowner whose land was taken, but that right has been exercised by you. That does not give you a fresh right, as you have ceased to be a landowner whose land is traversed.

Saunders: My *locus standi* against the original bill was not exercised by opposing the bill, because the promoters promised to make the line in a particular direction.

Mr. RICKARDS: The question between the company and you as a landowner, is a thing that is past and gone. You are now an ex-landowner, and the company has taken your land and you are now a neighbouring landowner in respect of land other than that taken.

Saunders: Granted that we are only adjoining landowners for that purpose, we are adjoining landowners in rather a different position from that of a person who never was anything more than an adjoining landowner, as we had a *locus standi* to oppose the bill originally, and should have done so, if it had been brought forward in its present form. We ask now to be restored to our original position as regards a *locus standi* to oppose. As against the closing of the footpath through our estate, we claim a *locus standi* on that ground, irrespectively of the proposed partial abandonment.

Clerk, Q.C. (for promoters): We say you have no interest remaining in that footpath.

Saunders: I will call evidence on that point.

Mr. Beattie (called and examined by Saunders): A portion of the footpath to be shut up passes over what we still claim to be the *solum* of the Scottish Heritages company. There was nothing in the Act of 1880 with regard to closing that footpath. When I gave evidence in 1880, I was assured the footpath would not be interfered with, and that influenced me to support the bill. The footpath is still a public way, as it has been from time immemorial, and it is over the soil of our estate. The effect of closing it would be to cut us off from direct access to a large portion of Edinburgh.

The CHAIRMAN: If it is a public pathway, it is vested in the street authority.

Saunders: Not in all respects. From a notice

I have just received, it appears that, so far as the *solum* under the path goes, the promoters take that under their powers of 1880, so I cannot rest my case upon the fact that we have the *solum* in that portion of the land.

(*Cross-examined* by Clerk, Q.C.: We had laid out a plan for building on part of the land through which this path used to run, and until the notice was served, treated the estate as our own. We have not covered any part of the lane, but have left a separation between our buildings. The lane is 6 feet wide, and is cut through by the proposed railway. A bridge over the railway would suit our purpose. We do not object to its going through our land. The lane is walled in on our side, and fenced in on the other.

Re-examined by Saunders: There is nothing in the Act of 1880 authorising us to shut up a road or path. If the footpath is kept open, we ask for a bridge over the railway, but if it is closed, a bridge would be useless.

Saunders: In several cases where roads have been proposed to be stopped up, the Referees have allowed a *locus standi* to persons whose access was interfered with. (*Lancashire and Yorkshire Railway (New Works) Bill*, 2 Clifford & Stephens, 173; *Lancashire and Yorkshire Railway Bill*, 1 Clifford & Rickards, 235; *London and North-Western Railway Bill*, 2 Clifford & Rickards, 286; *Midland Railway Bill*, *ib.* 298.)

Mr. RICKARDS: Those were cases where people were interfered with in their trade.

Clerk (in reply): The injury here, even if proved, would be of the vaguest description; but, as a matter of fact, there is no power in the bill to shut up this footpath in any part where the petitioners are owners of the *solum*, even if it were conceded that it gave them a *locus standi*. It is under clause 37 of the Act of 1880 that we have to acquire the land between the limits of deviation and the property of the Edinburgh Asylum for the Insane, and on the land so to be acquired we are to erect our station. But neither that Act nor the bill gives us special power to stop up any public way. If we do, in the execution of our powers, stop up any public way, that is the affair of the public authorities, and not of the petitioners.

The CHAIRMAN: We *Disallow* the *locus standi* of the Petitioners, both on the grounds of deviation from, and alteration in, the plans of 1880, and also the stopping up of the public path.

Agent for Bill, *Robertson*.

Agents for Petitioners, *Grahames & Currey*.

ELEMENTARY EDUCATION PROVISIONAL ORDER CONFIRMATION (LONDON) BILL.

Petition of THE SOUTH-EASTERN RAILWAY COMPANY.

6th July, 1892.—(Before Mr. HINDE-PALMER, M.P., Chairman; Sir JOHN DUCKWORTH; Sir F. S. REILLY; and Mr. BONHAM-CARTER.)

Practice — Jurisdiction of Court — Elementary Education Act, 1870 — Provisional Order Confirmation Bill — Whether Public or Private Bill — General Rule as to, How far Applicable — S. O. 89 (Referees to decide as to Rights of Petitioners, &c.) and 151 (Proceedings on Provisional Orders Confirmation Bills) — Railway Company and Public Body — Same Land Scheduled — Petitioners as Trustees of Public Funds — Position of, as compared with Private Petitioners — Limited Locus.

The bill was one for the confirmation of a Provisional Order obtained by the School Board of London under the Elementary Education Act, 1870, and was petitioned against by a railway company. The promoters raised the preliminary objection that the Referees had no jurisdiction in the decision of questions relating to the bill, on the ground that section 20 of the Elementary Education Act, 1870, enacted that "the Act confirming such order shall be deemed to be a public general Act of Parliament," and the Act did not contain any clause declaring that the bill for confirming such order should, if petitioned against, be referred to a Select Committee, and dealt with like an opposed private bill, as expressly enacted in the case of Provisional Orders under the Gas and Water Facilities Act, 1870; the Tramways Act, 1870; and the General Pier and Harbour Act, 1861:

Held, however, that the Court, having had the bill and petition referred to them by order of the House, could not go behind such order, and had competent jurisdiction, under S. O. 89 and 151, to deal with the question of the *locus standi* of petitioners against the bill.

The same land was scheduled by the School Board of London under the Provisional Order sought to be confirmed by the bill, and by

the petitioners under a bill also before Parliament. The promoters contended that the petitioners were not entitled to be heard in the same way as if the bill had been promoted by private individuals, inasmuch as they were a public body, discharging public duties, and trustees of public moneys, and were also, by the nature of their functions, restricted in the selection of a site for their schools :

Held, however, that this did not affect the right of the petitioners to be heard as to the acquisition of the land in question by the promoters.

The *locus standi* of the petitioners was objected to, because (1) they are not the owners or occupiers of any lands or premises described in the schedule to the said Provisional Order, or which will be taken or interfered with under the powers of the bill; (2) no property, right or interest of the petitioners will, in fact, be taken, interfered with, or affected; (3) it is alleged in paragraph 3 of the petition that the petitioners are themselves promoting a bill in the present session of Parliament (which has passed the House of Commons, and is now pending in the House of Lords), entitled, "An Act for Authorizing the South-Eastern Railway Company to make New Lines, and widen their Existing Lines in the City of London, &c., and for Other Purposes," by which bill (clause 5) power is sought to acquire, for the purposes of the said bill, the same lands as are proposed to be taken by the School Board under the said Provisional Order, but it is not alleged, and it cannot be shown, that the petitioners will be in any worse position in regard to the lands therein referred to, if the powers sought by the promoters of the bill are granted, than they are at present; (4) the allegations made by the petitioners in paragraphs 3, 4, 5, and 6 inclusive, of the petition, merely tend to show that the petitioners are competitors with the promoters of the bill for certain lands, which the promoters were the first to seek to acquire, and which they seek to acquire as trustees of public funds, and in the performance of a public duty, and for the purpose of enabling them to acquire which lands, a bill, confirming a Provisional Order, has already passed the House of Lords, and in any case such allegations do not entitle the petitioners to be heard against the bill; (5) the whole question of the acquisition of the said lands by the promoters of the bill, and the objection thereto of the petitioners, was argued

before, and decided by, the Committee of the House of Commons, who passed the bill referred to in the 3rd paragraph of the petition, and if it is desired by the petitioners to raise any further points and arguments in respect of the acquisition of the said lands, it will be competent to the petitioners to do so upon the consideration of the bill now pending in the House of Lords, as alleged in the said 3rd paragraph of the petition; (6) the petitioners have not, and do not allege that they have any right or interest in any land or premises which will be taken or interfered with under the powers of the bill, entitling them to be heard according to the practice of Parliament.

Chandos Leigh, Q.C. (for promoters) : I raise the preliminary question whether this Court has any power to entertain a petition against a Provisional Order under the Elementary Education Act, 1870. Section 20 of that Act provides :— "No order so made shall be of any validity unless the same has been confirmed by Act of Parliament; and it shall be lawful for the Education Department, as soon as conveniently may be, to obtain such confirmation, and the Act confirming such order shall be deemed to be a public general Act of Parliament." With reference to that section, Mr. Owen in his "Education Acts Manual" (15th Ed., p. 87) says, "Some of the Acts authorising the issue of Provisional Orders by Government departments contain a clause to the effect that in case any petition shall be presented to either House against a Provisional Order in the progress through Parliament of the bill confirming the order, the Bill, so far as it relates to the order petitioned against, may be referred to a Select Committee, and the petitioners shall be allowed to appear and oppose as in the case of private bills. There is not, it will be observed, any such provision with regard to Provisional Orders under this section." In the Gas and Water Facilities Act, 1870 (33 & 34 Vict., cap. 70), there is this distinct proviso inserted (section 9) "If while any such bill is pending in either House of Parliament, a petition is presented against any Provisional Order comprised therein, the bill so far as it relates to the order petitioned against, may be referred to a Select Committee, and the petitioner shall be allowed to appear and oppose as in the case of a bill for a special Act." A similar clause is inserted in the Tramways Act, 1870, and the General Pier and Harbour Act, 1861. *Expressio unius exclusio alterius* is applicable to this case. Standing Order 151 which provides for the consideration of Provisional Orders by committees in the same way as private bills

declares "that the proceedings . . . shall be subject to the same rules and orders of the House . . . as in the case of private bills . . . so far as they are applicable." I submit those rules are not applicable here, but that the bill must be treated as a public general Act of Parliament. In all these cases also there is a preliminary enquiry at which it is competent for people who object to be heard.

The CHAIRMAN: Their having objected and having been heard on the preliminary enquiry does not exclude them from being heard here.

Sir F. S. REILLY: S. O. 89 declares the powers of the Referees to extend to dealing with petitions against Provisional Orders as well as against private bills.

Chandos Leigh: That S. O. is however limited by the express words in the different Acts relating to Provisional Orders.

Sir F. S. REILLY: The bill is here with a petition against it referred to us in the ordinary course, and we cannot go behind that in the face of S. O. 151.

[Objection over-ruled.]

Erskine Pollock (for petitioners): This is a bill to confirm a Provisional Order made by the Education Department to enable the School Board for London to put in force the Lands Clauses Consolidation Act. The South-Eastern railway company have a bill in Parliament under which they take the same land as the School Board propose to take. As a matter of principle it is clear Parliament cannot give two parties compulsory power over the same land independently of one another. In the *Whitehaven, Cleator and Egremont Bill* (2 Clifford & Rickards, 65), the Court gave a *locus standi* limited to the question of the taking of the land, which is all we claim here.

Chandos Leigh, Q.C. (in reply): If we were in the position of a railway company competing with another company for the same land, the petitioners would be entitled to a *locus standi*, but the School Board of London are a public body entrusted with public duties, and are not even independent in their choice of sites for Board Schools, being under the control of the Education Department in that and other respects. We are limited in area as regards our sites. In addition to that we have to consider the question of the burden to the ratepayers. We are trustees for the public and are bound to select the least expensive site that will fulfil the necessary conditions.

Sir F. S. REILLY: Put the case of the War Office requiring land.

Chandos Leigh: A public institution under State control is not in the same position as a railway company.

Sir F. S. REILLY: That argument does not apply in a case of *locus standi*.

The CHAIRMAN: The arguments used on behalf of the promoters are such as can properly be urged before a Committee, to whom the decision of the questions involved essentially belongs.

Locus standi Allowed.

Agents for Bill, Gedge & Co.

Agent for Petitioners, Cooper.

GLAMORGANSHIRE CANAL (RAILWAY) BILL.

Petition of THE MARQUESS OF BUTE.

4th July, 1882.—(Before Mr. HINDE-PALMER, M.P., Chairman; Mr. PARKER, M.P.; Sir JOHN DUCKWORTH; Sir F. S. REILLY; and Mr. BONHAM-CARTER.)

Landowner, opposing Railway in respect of Private Road—Competition for Coal Traffic between Canal Company and Private Owner—Railway running up to Private Road but not Touching it—Connecting Link of Railway made by Second Company under Statutory Agreement with Landowner—Road, Interference with Traffic of, by Railway.

In 1880 Lord Bute made an agreement with the Great Western railway company, under the company's Act of that year, by which they were authorised to make a line of railway over a private road belonging to him. A bill was now promoted by a canal company owning land extending up to the road in question, for the construction of a railway on their own land, but forming at the point where their land touched the road a connection with the line which the Great Western company were authorized to carry across the road, by virtue of the agreement. Lord Bute petitioned, alleging competition and general injury to his interests at Cardiff; pointing out that the traffic on the promoters' canal was not contemplated in the arrangement of 1880; and claiming leave to ask for protective clauses in respect of the additional traffic which would be conveyed across the road under the powers of the bill:

Held, that as the proposed line stopped short of the petitioner's land, and the connecting line would be constructed across the private road by his authority, he had no *locus standi* against the bill.

The *locus standi* of the petitioner was objected to, because (1) no land or property of his will be taken or affected; (2) many of his allegations, even if true, are outside the bill, and insufficient to support a *locus standi*; (3) he alleges that the construction of the works authorised by the bill will interfere with his works and property, and particularly with the traffic to his shipping staiths on the river Taff, but the bill authorises no works whatever in the water or across the waterway, either of the river Taff or the canal, and the works proposed by the bill will be constructed wholly upon lands belonging to the promoters; (4) the petitioner claims to be heard on the ground of competition, but the promoters were established so long ago as the year 1790, and their statutory position and privileges are of much earlier date than those of the petitioner. No new competition will be set up by the bill, but at most a trivial and unsubstantial improvement of existing competition. It is denied, therefore, that the petitioner has any right whatever to be heard against the bill, on the ground of competition; (5) the petitioner cannot be heard consistently with practice.

Michael, Q.C. (for the petitioner): This is a bill to empower the company to make and maintain a railway and other works at Cardiff, and also to construct a short line of railway to connect the Glamorganshire canal with the Great Western. The allegation upon which I rely in the petition is that "for the purpose of utilising the proposed railway, and connecting it with a public line of railway, it will be necessary to lay down rails across a certain road, the soil and freehold of which belong to Lord Bute, and in other ways to interfere with and injure his property in and near to the said road." I admit that the crossing of the road will be effected in virtue of an agreement between the Great Western company and Lord Bute, by which agreement the Great Western company were authorised to cross the road. But under the bill other traffic will be conveyed across that road than was contemplated by that agreement.

Pembroke Stephens, Q.C. (for promoters): The bill does not take any power whatever over this private road. The power sought in the bill is simply one to construct a line of railway on our own land up to the road.

[*Clarke*, engineer, produced the deposited

plans and pointed out that the road was not in the book of reference or within the limits of deviation, and that the promoters had no power to cross or touch it under the bill.]

Michael: The plans show that the proposed railway is of no use and cannot be connected with the Great Western system without crossing this road, whereas such connection is the object of the bill. It is true that the Great Western company have power to cross the road under the agreement of 1880. A portion of Lord Bute's land was then transferred to the Great Western company for the purpose of constructing a line to the river Taff, in order to communicate with certain staiths belonging to Lord Bute; but now the Glamorganshire canal company are seeking to make use of this agreement of 1880, in order to open up a communication with the Great Western line. Without this bill their traffic cannot cross our road; and all we ask for is a limited *locus standi* entitling us to go before the Committee and say that when the line is constructed, in connection with that of the Great Western company, the traffic may be conducted with as little interference as possible with the traffic on our road. It is true we have granted to the Great Western company the right of crossing this road, and no doubt they will be the carrying company if the promoters' line is sanctioned. But though without this bill the Great Western might carry over the road by virtue of the agreement of 1880 traffic arising from any other source, they could not, but for this bill, carry across the road any of the Glamorganshire canal traffic. Thus additional traffic must be brought across our road under the bill, and we wish to ask the Committee for protective clauses.

Sir F. S. Reilly: The promoters say in their preamble that one of their objects is merely "to authorize the company to construct on their own land a railway communicating with a branch railway of the Great Western company made under the Great Western Railway Act, 1880."

Stephens was not called on.

Locus standi Disallowed.

Agents for Petitioner, *Connell, Hope & Spens*.

Agents for Bill, *Wyatt, Hoskins & Hooker*.

GLASGOW CITY AND DISTRICT RAILWAY BILL.

Petitions of (1) THOMAS SMITH, and (2) JOHN WYLIE.

9th March, 1882.—(Before Mr. LYON PLAYFAIR, M.P., Chairman; Mr. HINDE-PALMER, M.P.; Mr. PARKER, M.P.; Sir JOHN DUCKWORTH; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Practice — Petitions, Signatures to, Invalid—Landowners, Agents for, Signing under Power of Attorney—Power of Attorney, Evidence as to, in Support of Signatures to Petition—Lost Power of Attorney, Proof Offered of—Verbal Authority to Act for Landowners, evidence of—Must be Clear or will be held Invalid.

Two petitions by landowners were signed for them in their absence from the United Kingdom, as follows: "Thomas Smith, by his Attorney, Francis Smith," and "John Wylie, by his Attorney, J. S. Wylie." Oral evidence being offered as to the validity of the respective powers, it appeared that in the latter case the power was believed to have been duly executed, but was some 20 years old, and the witness could not say that he had seen it, though J. S. Wylie was now acting under it in the management of the landowner's business. In the former case the so-called power was verbal only, being no more than a request and an authority to John Smith by the landowner to look after his property in his absence:

Held, upon these facts, that though, upon clear evidence of a power of attorney, a petition would be received, the evidence as to the existence of the power in both these cases was too vague to justify a *locus standi* in either.

The *locus standi* of Thomas Smith was objected to upon the following grounds (*inter alia*) (1) the petition is not signed by the said Thomas Smith, he being within the United Kingdom and competent to sign the same had he been so disposed; (2) the petition is not signed by any person or persons having competent authority to sign the same; and it does not appear, nor is it the fact, that the person whose signature is attached to the petition held at the time, when he signed the same, a power of attorney from

Thomas Smith authorizing him to sign the petition on his behalf and as his petition, and no person is competent without such power of attorney to sign a petition on behalf of another person according to the practice of the House of Commons.

The *locus standi* of John Wylie was objected to on the same grounds.

Pember, Q.C. (for both petitioners): The petitions are signed "Thomas Smith, by his attorney, Francis Smith," and "John Wylie, by his attorney, J. S. Wylie." By some oversight in Mr. Wylie's case the promoters did not serve the petitioner with the ordinary notice that his land was proposed to be taken, and it was not till two days before the last day for depositing petitions that Mr. J. S. Wylie—who acts for the petitioner, and holds from him a power of attorney for the management of his business—happened to discover through his law agent how the property (in which the business is carried on) was going to be affected. Owing to this neglect of the promoters, Mr. Wylie, being then in his yacht in the Mediterranean, could not be communicated with before the time for lodging petitions. Accordingly Mr. J. S. Wylie signed the petition for him. In the case of the *Glasgow, Bothwell, Hamilton and Coatbridge Railway Bill* (1 Clifford & Rickards, 72) a *locus standi* was allowed to the Duke of Hamilton on a petition signed by Mr. Padwick, who held what was equivalent to a power of attorney from the Duke. Both of the petitioners in this case are out of the country, and I cannot say they have given special authority to sign the petitions. Moreover, I must give oral evidence with regard to each power. In Mr. Wylie's case there is a written document, but it cannot be found. In Mr. Smith's case the power of attorney has been given verbally.

[*Mr. David Murray*, of Glasgow, solicitor to both petitioners, gave evidence in support of the facts stated by counsel. He had not, he said, prepared the power of attorney given by Mr. Wylie, and was not certain that he had seen it, but believed that he had done so some years ago, and Mr. J. S. Wylie was now acting under the document in the management of the petitioner's business. Witness believed that this power of attorney was executed some twenty years back. Mr. J. S. Wylie signed for the firm, of which Mr. Wylie was now the sole partner, and the premises affected by the bill were those of the firm. As to Mr. Smith's petition, the power of attorney was a verbal one.]

Shiress Will (for the promoters): I object to any evidence of a verbal power of attorney, and if any such evidence is received the witness

must first be asked whether he was present when the verbal power was given.

Mr. RICKARDS (to witness): Can there be, according to the law of Scotland, a verbal power of attorney?

Witness: Not exactly in the form of a power of attorney. Here there was a request and an authority from the father to the son, who signs the petition, to look after his property in his absence from England.

Will was not called on.

The CHAIRMAN: Though a petition against a private bill stands on a somewhat different position from a public petition, and though if there was clear evidence of a power of attorney, such a petition might be received, we think that the evidence as to the power of attorney is so loose in both these cases that we must disallow the *locus standi*.

Locus standi of (1) Thomas Smith and (2) John Wylie Disallowed.

Agents for both Petitioners, Martin & Leslie.

Petitions of (3) SIR ARCHIBALD C. CAMPBELL, BART.; (4) MERCHANTS, OWNERS AND OTHERS IN GLASGOW; (5) AND GLASGOW PUBLIC HALLS COMPANY.

Railway Tunnel under Streets—Landowner's Right in Subsoil of Streets—Easements Vested in Street Authority—Superior and Feuars, their Respective Rights in Solum of Streets—Railways Clauses Consolidation (Scotland) Act, 1845, secs. 55, 70, and 90—Property Affected by Bill, Proposed Repeal of Statutory Liability to Take—Under-pinning Clause—Cellars and Vaults in Streets.

A railway company proposed to tunnel under certain streets in Glasgow, and in doing so sought for power to underpin, as well as exemption from the ordinary liability to purchase adjacent property interfered with. The bill was opposed by (3) the superior of land let to feuars on either side of some of the streets under which the railway would run, the petitioner claiming a landowner's *locus* by reason of his property in the *solum* of the streets; and (4 and 5) by owners who, besides their claim to the *solum*, would be subject to the underpinning and the compulsory purchase clauses. The promoters contended that the claim of the petitioning superior was of too unsubstantial

a nature to justify the grant of a general *locus standi*, inasmuch as he had no means of access to the *solum* and could not therefore acquire any property in it. Against all the petitioners it was urged that their rights in the *solum* were largely over-ridden by the Glasgow Police Act, 1866, and by subsequent local Acts which vested the Glasgow streets in the local authority, and that as merely qualified owners their claim would be satisfied by a *locus* limited to the clauses specially affecting them:

Held, that the ownership of the petitioners being admitted, the usual incidents of ownership followed in respect of *locus standi*, which must be without limitation.

The *locus standi* of Sir A. C. Campbell was objected to, because (1) the petitioner is not owner, lessee or occupier of any lands or buildings which are subject to the compulsory powers of purchase proposed to be conferred by the bill, nor has he such an interest in any such lands or buildings as entitles him to be heard; (2) the streets under which, or parts of which, the petitioner claims an interest, are public streets vested in the Lord Provost, magistrates and town council of Glasgow, as the police authority of Glasgow under the powers of the Glasgow Police Act, 1866, and subsequent Acts, and they have petitioned against the bill; (3) the exercise by the promoters of the powers proposed to be conferred by the bill with respect to the streets would not injuriously affect the petitioner's property, or would not affect such property in such a manner, or to such an extent, as would entitle him to be heard upon his petition against the bill, on the ground of exceptional, or special loss or damage; (4) the petitioner has no such interest in the subject-matter of the bill, and sets forth in his petition no such case of injury, nor any such fact or reason, as entitles him to be heard according to practice.

The *locus standi* of (4) merchants, owners and others in Glasgow, and of (5) Glasgow public halls company was objected to on similar grounds.

Balfour Browne (for Sir A. C. Campbell): The petitioner is the proprietor of a large estate in Glasgow, and is the superior of most of the ground in the west of Glasgow, through which this railway will pass. A superior in Scotland is a ground landlord in perpetuity. He gives a perpetual grant of land to the feuar, who pays a certain annual sum to the superior, the house built upon

the land being the security to the superior for the feu. The first question is whether, as superior, the petitioner should be heard against the bill to say that the feuars to whom he has let his land are affected by it. This question is decided by the *Leith Provisional Order (Artisans Dwellings) Bill* (2 Clifford & Rickards, 235). With regard to the second question, the property in the *solum* of the streets under which the railway will tunnel belongs to the petitioner. It is true that by the Glasgow Police Act, 1866, the streets are vested in the corporation, but this vesting is merely for street objects and sewerage purposes. The subsoil, to the centre of the earth, still belongs to the adjoining owners on either side of the street. As the company propose to tunnel underneath the street, they would thus acquire a statutory right by the Railways Clauses Act, Scotland, 1845, section 70, to carry away without any compensation the whole of the subsoil.

The CHAIRMAN: By the general law of Scotland, do the minerals belong to the superior or to the feuar?

Shiress Will (for promoters): They belong to the feuar.

Balfour Browne: In this case, by special covenant, the superior reserves his right to the freestone on certain conditions. But in West Regent-street, under which the railway will run, the whole of the subsoil is still in the hands of the petitioner. We claim, therefore, a general *locus* as landowner. (*St. Helen's Borough Improvement Bill*, 1 Clifford & Stephens, 64; *Castleford and Whitworth Gas Bill*, 2 Clifford & Rickards, 78.)

Pember, Q.C. (for (4) merchants, &c., in Glasgow, and (5) Glasgow public halls company): These petitioners own premises in the Kent-road, under which the proposed railway will run. The bill authorises the promoters (clause 40), "in order to avoid injury to the houses, cellars, and buildings within 100 feet of the railway," "at their own cost and charges, to underpin or otherwise strengthen any such house, cellar or building." By clauses 42 and 44, the promoters then seek to get rid of their liability under section 90 of the Lands Clauses Act, Scotland; that is to say, where the promoters go under cellars or vaults, they are not to be required to take the whole of the land, portions of which may be so touched. The premises of the public halls company cost them upwards of £100,000, and the bill in its present form would enable the promoters to take such part of this property as might suit their purpose, without taking the whole. We object also to the power sought by the promoters of entering upon our property for the purpose of underpinning it. Further, we say that owing to the geological

formation of the ground underneath our buildings, we apprehend serious injury to the foundations of our buildings if this line is constructed close to them. As owners of the land abutting on the roadway, our property extends *usque ad medium filum* of Kent-road; and the only effect of the Glasgow Police Act, 1866, is to give the street authority an easement of the surface for traffic, and some portion of the subsoil for purposes of sewerage. Subject to that easement, the *solum* remains in the original owners, who are entitled to everything under the road. We are within the case of the *Glasgow City Street and Improvement Bill* (1 Clifford & Rickards, 158).

Will: In that case the attention of the Court was not called to the cases of *Coverdale v. Charlton* (L.R. 4 Q.B.D. 104) and *Taylor v. The Corporation of Oldham* (L.R. 4 Ch.D. 395), which show that any ownership of this kind, where public rights are superadded, is somewhat more limited than the petitioners suppose.

Pember: Those cases do not contravene the proposition that, subject to the statutory easement of the street authority, the soil under the streets in Glasgow belongs to the owners of the adjacent property; and the proof of the proposition is that the petitioners have the right to make cellars where the railway company propose to make their tunnels so long as they do not interfere with the sewers or the surface of the street.

Will (in reply): As superior, the only right Sir A. Campbell has is to the payment of his fee duty, and with this right we do not interfere, nor do we diminish in any way his security for the payment. With regard to his claim as owner of the subsoil, or of part of the subsoil, the surface of these roads and streets is dedicated to the public, and the land on either side is not his but the feuars. Thus, he could not get access to the *solum* under the street unless he were to burrow down towards the centre of the earth and then come up to his *solum* from below. Such an ownership is of a shadowy kind not entitling the petitioner to be heard.

Mr. RICKARDS: The subsoil through which the tunnel will be made must belong to someone; to whom do you say it does belong?

Will: It belongs undoubtedly to Sir A. Campbell and the other petitioners, but so much of it as is street, and so much of it as is necessary to support the roadway and the sewers, is vested in the street authority whose rights are upheld in the cases already cited.

Mr. RICKARDS: Would the railway company be entitled to take this land without payment?

Will: I think not.

Mr. RICKARDS: Who would receive the value of the soil through which the tunnel will pass?

Will: Sir A. Campbell or his feuars, subject to the conditions of the feu.

The CHAIRMAN: Supposing the tunnel passed through valuable freestone, would Sir A. Campbell be paid for it by the railway company?

Will: Yes.

Mr. RICKARDS: You admit that the property of the petitioner is proposed to be taken. That being so does it not give him a landowner's *locus standi*?

Will: No doubt he owns the subsoil, but he has no useful ownership which he can turn to any account, because he cannot get access to it either from the right or the left, from the north or the south; I submit therefore that he is not entitled to the unlimited *locus standi* which ordinary ownership gives. So with regard to the other petitioners. All they can justly ask for is a *locus standi* confined to those clauses of the bill which specially affect the limited rights they possess in the *solum*.

The CHAIRMAN: The *locus standi* of all the Petitioners is allowed.

Locus standi Allowed.

Agent for (3) Sir A. C. Campbell, *Graham*.

Agents for (4) Merchants, &c., and (5) Glasgow Public Halls Company, *Martin & Leslie*.

GOLDEN VALLEY RAILWAY BILL.

Petition of T. J. STELLARD-PENOGRE AND OTHERS.

13th March, 1882.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE-PALMER, M.P.; Sir JOHN DUCKWORTH; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Landowner opposing Extension of Time Bill—Notice to Treat for Purchase of Land, Effect of—Arbitration and Award as to Price of Land—Award not taken up by Company—Landowner as Creditor of Company—Railway Company, Impecunious, Promoting Extension of Time Bill—Railways Clauses Act, 1863, Sec. 20.

A railway company promoted an extension of time and money bill, reciting in the preamble that they had not been able to raise their authorised capital under their Acts of 1876 and 1877 and had thus been unable to complete a line sanctioned in the latter year. In August, 1880, just before the expiration of their compulsory purchase powers under the Act of 1877, the company gave notices

to treat to certain landowners who had strongly opposed that Act. The company, however, had not taken up the umpire's award, and the landowners now petitioned against the extension of time, alleging that the promoters had not acted in good faith, and asking for protective clauses:

Held, that there were no special circumstances taking the case from the category of numerous decisions by the Court that landowners, after receiving notice to treat, become creditors whose rights are limited to the recovery of the sum awarded as compensation, with a lien for the purchase-money upon the land sold to the company.

The *locus standi* of the petitioners was objected to, because (1) no lands of theirs are sought to be acquired under the bill which (2) does not extend the time for the purchase of any such lands; (3) the petitioners admit that they have received notice from the company for the purchase of their lands, and that the umpire has made his award; and they are therefore simply creditors of the company, and as such have no right to be heard; (4) no ground is alleged entitling the petitioners to be heard according to practice.

Pembroke Stephens, Q.C. (for petitioners): This is the case of landowners objecting to an extension of time, and the question is whether the circumstances take it out of the general principle that where a landowner has received notice to treat he has no right to be heard against an extension of time bill. The bill is one "to extend the time for the completion of the railway authorised by the Golden Valley Railway (Extension to Hay) Act, 1877; to authorise the Golden Valley railway company to issue preference shares, and to borrow money for payment of debts." The Golden Valley company were incorporated by an Act of 1876 for the construction of a railway from Pontrilos to Dorestone in the county of Hereford, with power to raise a sum of £60,000. By an act of the following year the company were authorised to extend their railway to the town of Hay, and for that purpose were authorised to raise a sum of £72,000. The preamble of the bill recites that through the non-payment of calls or shares, issued under the Act of 1876, the company are still indebted to various creditors to the amount of about £20,000 in respect of the construction of the original line, and that the company "are proceeding to construct the railway authorised by the Act of

1877, but shares for only £8,040, part of the capital of £72,000, have been issued and accepted, and £4,257 have been paid thereon." The petitioners own the Moor estate, through which the line to Hay will pass for about two miles. The estate consists of a mansion with 2,500 acres, and will be intersected by the railway in a most objectionable manner. We opposed the Act of 1877 at great expense, but unsuccessfully, the promoters declaring it to be their intention to proceed at once with the construction of the railway. It will be only six miles and a quarter in length; but it has not yet been commenced, and the company now ask Parliament to extend the time for completing it for three years longer. The time limited by the Act of 1877 for the exercise of the powers of compulsory purchase expired on the 2nd of August, 1880. Just before that period expired, the company served notice on us for the purchase of about 19 acres of the Moor estate. We claimed £10,000 as compensation, and thereupon arbitrators and an umpire were duly appointed, and the umpire made his award in May, 1881. Up to the present time, however, the company have not taken up the award as they ought to have done, although repeatedly requested to take it up, their answer no doubt being that they have no money with which to pay the award. The petitioners say that the damage which the construction of the railway will cause to the Moor estate is very much increased by the delay which has already arisen, and the estate is much depreciated in value by reason of the uncertainty as to the intentions and capabilities of the company. The extension of time now sought will cause us additional injury, and of course this consideration did not form part of the case submitted to the umpire, and we can obtain no further compensation or relief in this matter, except by the authority of Parliament. We are advised that the company are asking for this extension of time with a view to sell the undertaking on advantageous terms, rather than with any intention of themselves completing the railway. They admit in their preamble that they are in financial straits, and therefore this is not the case of a solvent company dealing *bond fide* with a landowner, but of a company who postpone till the last moment their power of obtaining an equitable interest in our land, who confess that they have no funds with which to pay for it, and now seek for power to let the matter sleep, perhaps for ever. When we went to arbitration we assumed that everything would follow in good faith, but we cannot now arrange our property if leases fall in; we cannot get paid for our land, and this state of things is to continue at the will and

pleasure of the company for at least another three years.

Mr. RICKARDS: The bill does not take away or postpone your remedy under the award?

Stephens: It is a remedy against an impecunious company. If a company is impecunious, and knows itself to be so, it is not acting in good faith towards a landowner to give a notice to treat, and then come for an extension of time.

Mr. RICKARDS: You have sold your land. You are no longer a landowner.

The CHAIRMAN: Your remedy, such as it is, against the company, remains the same whether they let the time for completing the line go by or not.

Stephens: The bill does not incorporate the Railways Clauses Act, 1863. If it did, and the time were extended for making this line, we might (under sec. 20) go before the arbitrator and say, "You have not heard the whole case; this extension of time will add to the injury we shall sustain, as we cannot make a new lease owing to the uncertainty in which we shall be kept during the next three years." The company got the award contrary to good faith, and now try to shut our mouths when seeking for the protection which the general law certainly intended that landowners should enjoy.

Mr. RICKARDS: We cannot take into account that the company are in this impecunious state. You have sold the land, and you have your remedy at law as a creditor upon the award.

Stephens: That would or might be so if the company were content to stand upon existing legislation; but they are not content, and are now trying to alter existing legislation.

Mr. RICKARDS: The time within which the works are to be completed is not part of the contract between the petitioners and the company for the purchase of the land.

Stephens: The Act of Parliament itself constitutes the relation between all the parties whom the Act affects. A railway company ought to act *bond fide*; but here the company get possession of our land knowing well that they have not the means of paying for it or of completing the line; then they allow the matter to slumber for two years; and now they ask that their powers may be continued for three years more. We should be satisfied if we were allowed to go before the Committee to ask for a protective clause saying that in the extension of time to be granted the company should not be placed in any other or different position towards us than we are in now. In other cases where there have been special circumstances, landowners who have had notice to

treat have been allowed a *locus standi*. (*Drayton Junction Railway Bill*, 1 Clifford & Stephens, 28; *East and West Junction Railway Bill*, 2 Clifford & Stephens, 141; *North Metropolitan Railway Bill*, *ib.* 117; *Whitby, Redcar, &c., Union Railway Bill*, 1 Clifford & Rickards, 199.)

Batten (for promoters) was not called on.

The CHAIRMAN: At present the petitioners' right is only to get their money, though they have of course a lien upon the land. The remedy which they now have they will have if the bill passes. We are afraid we cannot go against the former decisions of the Court in this class of cases.

Locus Standi Disallowed.

Agents for Petitioners, *Simson, Wakeford, Goodhart & Medcalf.*

Agents for Bill, *Sherwood & Co.*

GRAVESEND RAILWAY BILL.

Petition of (1) THE LONDON, TILBURY AND SOUTHBURY RAILWAY COMPANY.

16th March, 1882.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE-PALMER, M.P.; Mr. PARKER, M.P.; and Mr. RICKARDS.)

Competition—Railway Companies as Pier Owners—As Owners of Ferry Rights—Steamship Traffic—Act of previous Session—Support of, by Petitioners—Amendment by Bill—Alleged Breach of Good Faith.

The bill empowered the promoters to extend their railway, already authorised to a certain point in the town of Gravesend, to the riverside, and there to construct a pier. The petitioners were a railway company, who had a station and pier on the opposite shore of the river to the pier proposed by the bill, as well as a pier in the immediate proximity of the proposed pier, and upon the same side of the river, and they possessed exclusive ferry rights between the two banks of the river and their own piers on either side. They had given evidence in favour of the construction of the promoters' railway, as authorised in the previous session, and alleged that the promotion of the present bill, involving the construction of a different railway terminus, was a breach of the understanding upon which they had supported the promoters in their previous

application to Parliament. They also claimed to be heard (1) on the ground of railway competition arising out of the powers proposed to be conferred upon the promoters for extending their railway to the riverside, and (2) as to the competition which would arise between themselves and the promoters as owners of piers, especially in relation to goods and passengers destined for steamships:

Held, that on the latter ground, viz., pier competition, the petitioners were entitled to a general *locus standi* against the bill.

The *locus standi* of the petitioners was objected to, because (1) the bill contains no provisions for taking, using and granting facilities over any of their lands, railway stations or accommodations, or for making traffic or other arrangements with them; (2) no competition will be caused within the meaning of S. O. 130; (3) several of the allegations of the petition are unfounded, and none of them are of such a nature as can be raised before a Committee according to practice; (4 and 5) the bill contains no provision affecting the petitioners, and the petition alleges no such interest in its provisions as to entitle the petitioners to be heard.

A. G. Rickards (for the petitioners): The bill authorises the promoters to extend their railway in Gravesend, and to make a pier in connection with it. The petitioners have a railway terminus at Tilbury, opposite to Gravesend, and they also have a pier and landing stage at Gravesend, and are owners of the ferry rights between Gravesend and Tilbury. The promoters were incorporated as a railway company by an Act of last Session, and were empowered to construct a railway from the London, Chatham, and Dover railway near Pinden to the boundary wall of the Ragged School in Gravesend, and they were also authorised to widen Church-street and make a new street from Church-street to High-street, and we allege that it was in great measure due to the point at which that railway was to terminate, that terminus being close to our pier at Gravesend, that we gave evidence in favour of the bill. We allege that the present bill will counteract the benefits which we anticipated from the bill of last Session, and upon the faith of which we supported it. The proposed pier is unnecessary, as it will be in the immediate proximity of our existing pier, and the proposed extension of the railway is obviously intended to take the place

of the terminus authorised by the bill of last session.

The CHAIRMAN: The present bill does not seek to abandon the works of last year. Is it not therefore simply a question of competition between the piers?

A. G. Rickards: Under the present bill the competition of the two railways is clear, inasmuch as we carry passengers by means of our railway and steam ferry to a pier at Gravesend, close to the pier proposed by the bill.

Pope, Q.C. (for promoters): The railway competition, if any, between the promoters and the petitioners at Gravesend, arose under the bill of last year, and the present bill only renders it more effective so far as the Gravesend company are concerned.

A. G. Rickards: The proposed pier will enable the promoters to contend with us for traffic which is of a new kind, so far as they are concerned, viz., passenger traffic to the Peninsular and Oriental and other companies' steamships, which are about to transfer their place of departure and arrival from Southampton to the Thames. Although the promoters have no rights of ferry, they would have a perfect right to allow the tenders of those lines of steamers to call at their pier to take up and put down passengers. At the present time we have the only access to the water edge, and so have the monopoly of that traffic.

Mr. RICKARDS: The works to be made under the bill are a pier and two railways. Are those two railways subsidiary to the pier?

A. G. Rickards: The pier is the main work, and is obviously intended for shipping passengers and goods.

The CHAIRMAN: Is your pier at Gravesend used for any other purposes but ferrying across? Is it used as a landing pier?

A. G. Rickards: The charges in respect of it are, it is true, included in the railway fare to and from Gravesend, but there is nothing to prevent our using it as a landing pier, or to prevent ocean-going steamers from coming alongside; and, if necessary, we have power to enlarge and improve it. When it was constructed, ocean-going steamers did not start from Gravesend. In the same way the steamers might use the proposed pier of the promoters. The following cases are in point, viz., *North British Additional Powers Bill* (1 Clifford & Rickards, 49); *Pier and Harbour Orders Confirmation Bill* (2 Clifford & Rickards, 57); *Hundred of Hoo Bill, on the Petition of the Medway Docks Company* (2 Clifford & Rickards, 260).

Pope, Q.C. (in reply): The London, Tilbury and Southend company can only be interested in across river traffic, for which we cannot compete

with them as we have no ferry rights, and do not propose to acquire them under the bill, or to interfere with theirs. They have a booking office at their pier in Gravesend, and passengers book there to any station on their railway across the river, and are taken across by means of their ferry boats, but it is not a pier for general purposes, and no steamers other than the ferry boats come alongside of it. It is, therefore, only a pier for ferry purposes, and as we do not, and cannot, under the bill, ferry goods or passengers across the river in derogation of their ferry rights, there can be no competition between us. Their position with regard to our bill last session was that, although the construction of our railway would cause a competition with them for London traffic, the advantages they anticipated from increased traffic between Kent and Essex, and *vice versa*, would more than compensate them for the competition, and they therefore gave evidence in support of our bill. We do not now propose to abandon any of the railways then authorised, but merely to make a spur to take our trains to the riverside where we propose to construct a pier. Steamers might, no doubt, come alongside our pier for passengers, but that would only increase the competition between the two railway companies at Gravesend, and not be a competition between piers as separate undertakings.

Mr. RICKARDS: It would be competition for traffic going to the Peninsular and Oriental and other steamships.

Pope: The authorising of our railway last session would carry with it, as far as the principle of competition is concerned, any such improvement as will be effected by the bill.

The CHAIRMAN: The Court is of opinion, that so far as the pier is concerned, the petitioners are entitled to be heard against the bill.

Pope: That is to say, as against the works clause, sub-section 2.

The CHAIRMAN: The whole subject of the bill is in fact the pier, the other works being subsidiary to it, and the *locus standi* of the petitioners will therefore be general.

Agents for petitioners, *Dyson & Co.*

Petition of (2) OWNERS, LESSEES, OCCUPIERS AND OTHERS; AND (3) W. F. G. NIGHTINGALE AND OTHERS.

Railway—Owners, Occupiers, &c.—Inhabitants—Alteration of Act of Previous Session—Authorised Street Improvements—Anticipated Benefits from—Virtual Abandonment of—Absence of Penalty for Non-completion of—Deposit money.

The bill sought powers to make a short extension of a railway authorised by an Act of the previous session, and to construct a new terminus. The Act of 1881 had empowered the promoters to make certain street improvements in connection with the station thereby authorised; and the petitioners were inhabitants of the town in which the terminus was situated, and in many cases owners and lessees of property abutting upon these street improvements. They alleged that the bill was in effect an abandonment bill, against which they were entitled to be heard, as their property and interests would be injuriously affected if the street improvements, authorised in 1881, were not carried out, and they further alleged that it was in anticipation of the benefits which they would have derived from these improvements that they had supported the Act of 1881. They called the attention of the Court to the fact that there was no penalty attaching to the promoters for the non-completion of the street works, the deposit-money as to them having, contrary to usage in the case of railway works, been recoverable immediately on the passing of the Act of the previous session:

Held, however, that the abandonment of the street improvements, not being authorised by the bill, could not be assumed by the petitioners, whose *locus standi* was accordingly disallowed.

The *locus standi* of (2) owners, lessees and occupiers, &c., was objected to, because (1) the allegation that some of the petitioners are owners, &c., whose premises have been scheduled, and are proposed to be acquired by the promoters, is untrue; (2 and 3) no lands or property of the petitioners will be taken or interfered with under the bill, none of whose provisions affect them; (4) the matters set forth in the petition are not such as can, according to practice, be raised before a committee; (5) the petitioners have no interests in the objects and provisions of the bill.

The *locus standi* of (3) W. F. G. Nightingale and others was objected to upon similar grounds as those taken against that of petitioners (2).

Worsley Taylor (for petitioners (2) and (3)): The petitions are practically identical. We

admit that none of the petitioners' premises are scheduled, or will be taken under the powers of the bill. We are, however, none the less injuriously affected by the bill. The promoters were incorporated by an Act of last session, which empowered them to make a railway, and also certain street improvements, in Gravesend. The capitals for these two purposes were separate, that for the latter purpose being £35,000. The making of these street improvements was part of a bargain made with the inhabitants of Gravesend, and one of the inducements held out to Parliament to pass the bill. The deposits on the capital required for the railway and that required for the street improvements, were, like the capital itself, kept distinct. The deposit for the railway itself cannot be got out till a certain proportion of the money is expended in the ordinary way, but this is not the case with the capital allocated to the street improvements, and the promoters were enabled to get that out immediately after the passing of the bill. Therefore, in the event of their not carrying out the street improvements in connection with their station, there is no penalty upon them, and the consideration, so to speak, upon which the inhabitants consented to the bill, and Parliament passed it, fails altogether. The new terminus, which the bill authorises, is obviously intended to take the place of the station and street improvements, which were authorised by the Act of last year, the construction of both termini being quite superfluous and unnecessary. The petitioners are many of them owners and occupiers of lands, which abut on the proposed street improvements of last session, and they are entitled to be heard upon what is really an abandonment bill involving a breach of faith towards them. They claim to be heard as inhabitants of Gravesend.

Mr. RICKARDS: The bill does not propose to abandon the street improvements or the terminus of last year. That is a mere assumption on the petitioners' part. So far as such an abandonment is concerned, the bill in no way legalises it. Can you refer to any case in which we have given a *locus standi*, where there was not an actual but an assumed abandonment?

Worsley Taylor: I am not aware of any. The case is entirely new.

Pope, Q.C. (for promoters): The case of the *Metropolitan District Railway Bill* (2 Clifford & Stephens, 21) is similar.

The *CHAIRMAN* (to *Pope, Q.C.*): We need not trouble you to argue the case for the promoters. The Court *Disallows* the *locus standi* of the Petitioners.

Agent for Petitioners (2 and 3), *J. H. Russell*.
Agents for Bill, *Dyson & Co.*

GREAT WESTERN RAILWAY (No. 2) BILL.

Petition of THE PONTYPRIDD, CAERPHILLY AND NEWPORT RAILWAY COMPANY.

20th March, 1882.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE-PALMER, M.P.; Mr. PARKER, M.P.; and Mr. RICKARDS.)

Railways—Running Powers—Traffic Facilities—
Competition—Diversion of Traffic.

In this case the Great Western railway company applied for powers to construct a short railway, which would in conjunction with their existing lines enable them to convey coal traffic from the Rhondda Valley to Cardiff and Newport. This traffic was already conveyed by the petitioners, partly over their own railway and partly by running powers over three small independent railways, in the case of Cardiff traffic to Cardiff itself, and in the case of Newport, to within a distance of three miles of that station (the petitioners' running powers not extending to Newport itself), and being forwarded the remaining three miles either by the promoters, whose railway extended into Newport, or by a local company, who had running powers over that portion of the promoters' railway. The petitioners, under these circumstances claimed a *locus standi* on the ground of competition and diversion of traffic, which was allowed by the Court, who, however, expressed a doubt on the strength of the petitioners' claims to be heard. Beyond the fact of the petitioners' claim to a *locus standi* being based on their possession of running powers over different lines and traffic facilities by agreement with independent companies, the case possessed no value as a precedent, being founded on very special and local circumstances, and depending largely on maps of the *locus in quo*.

Pope, Q.C., appeared for the petitioners, and Clerk, Q.C., for the promoters of the Bill.

Locus Standi Allowed.

Agent for Bill, Mains.

Agent for Petitioners, Bell.

GREENOCK CORPORATION AND BOARD OF POLICE BILL.

Petition of (1) SHIPOWNERS, MERCHANTS, TRADERS, AND OTHERS.

3rd April, 1882.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE-PALMER, M.P.; Mr. PARKER, M.P.; Mr. MELDON, M.P.; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Harbour Trust—Shipowners, Merchants, and Traders—Petitioners Electing Trustees—Trust composed of Town Council and Elective Members—Alteration in Constitution of Trust, and Election of Town Council Members—Extension of Burgh Boundaries—Increase of Municipal Constituency, and of Town Council—Complaints against Existing Legislation—Representation.

The bill, which was promoted by the corporation of Greenock, provided, *inter alia*, for the extension of the burgh boundaries, and with it an increase in the number of municipal electors and of town councillors. The bill was opposed by shipowners, merchants, traders, and others, on the ground that it affected the constitution and administrative arrangements of a harbour trust, some of whose members were elected by the petitioners. The trust, as at present constituted, consisted of the whole town council, 16 in number, as *ex-officio* members, and in addition, nine members chosen by shipowners and harbour ratepayers. The bill did not propose to alter the relative proportions of these two classes of members, but provided that, in view of the proposed increase in the numbers of the town council, 16 members should still be contributed by the town council to the harbour trustees, 10 of these being chosen by the whole council (now to consist of 25 members) and six being *ex-officio* members as officers of the town council. The petitioners objected that this would tend to increase still further the preponderating influence of municipal interests at the board, and that by the extension of the burgh, a different class of electors of the town council, and therefore indirectly of the municipal portion of the harbour trust,

would be created. The petitioners also claimed the right of being heard against the bill in order to challenge the existing preponderance of the municipal element at the harbour board. It was answered that this was in effect a complaint against existing legislation, and that the petitioners were not the proper parties to be heard, being represented by the harbour trustees generally, who did not oppose the bill:

Held, that the *locus standi* of the petitioners must be allowed; limited however to clause 29 of the bill, which provided for the re-arrangement of the town council members of the harbour trust.

The *locus standi* of the petitioners was objected to, because (1 and 2) no lands or property, rights or interests, of theirs will be taken or interfered with under the powers of the bill; (3) the main objects of the bill are to extend the boundaries of the burgh of Greenock, and to increase the number of members of the Town Council, but it does not alter the constitution or administrative arrangements of the trustees of the port and harbour of Greenock; (4) even if the bill did seek to alter the constitution or administrative arrangements of the said trustees, the petitioners are not entitled to represent the shipowners and harbour ratepayers of Greenock, who are represented by the said trustees, who do not oppose the bill, and they and not the petitioners are the proper persons to protect the interests of their trust and of the shipowners and ratepayers; (5) the alteration of the constitution and administrative arrangements of the harbour trust in the manner proposed by the petitioners, or in any other manner, is a matter foreign to the bill, which is promoted by the corporation of Greenock for municipal purposes, and the petitioners have no right by opposing the bill so promoted to seek an alteration in the constitution and administrative arrangements of the harbour trust; (6) in so far as the petitioners object to the proposals of the bill in regard to electric lighting, they are not entitled to represent the harbour trustees, nor the shipowners and ratepayers, who are represented by the said trustees, who are entitled to protect the interests of the said trust as well as of the shipowners and ratepayers, but who do not oppose the bill; (7) the petition does not allege or show any such interest in the objects and provisions of the bill as to entitle the petitioners to be heard according to practice.

Pember, Q.C. (for petitioners): The bill is entitled "A bill for extending the boundaries of the burgh of Greenock; to increase the number of the town council; to alter the constitution of the board of police of Greenock; and to confer further powers on that board with respect to their gas undertaking and the supply of electric light; to make further provisions with respect to the harbour trust of Greenock, and the water trust of Greenock, and the municipal government of the burgh, and for other purposes." It is proposed to extend the boundaries so as to make them co-extensive with the police boundaries. With regard to the number of signatories to the petition—

Pope, Q.C. (for promoters): We do not rely upon any defect in the petition, or desire to raise the question whether the petitioners represent an important class.

Pember: Passing then to the manner in which the harbour trust is affected by the bill, that trust has been formed and afterwards modified by several Acts of Parliament, and at present it is constituted of 25 persons, of whom 16 are town councillors, that is to say, the whole of the town council are *ex-officio* harbour trustees (the provost being *ex-officio* chairman of the whole board), and the remaining nine trustees are elective members chosen by the local shipowners and harbour ratepayers in order to represent more properly the interests of those electors. By section 4 of the bill and relative schedule it is proposed for all municipal purposes, and for the purposes intended by the bill, to extend the limits of the burgh of Greenock, so as to embrace within the same extensive land districts not at present included therein; and by section 7 it is proposed to confer upon the householders within those districts having the requisite qualification, in common with those within the existing limits of the said burgh, the right of electing the town council; and by section 16 it is proposed to increase the number of the town council from 16, as at present fixed by law, to 25, of whom one shall be provost, six bailies, and one treasurer. By section 29 of the bill it is proposed that from and after the first election of magistrates under the same, if passed into an Act, the harbour trustees shall consist of the provost, four of the bailies, the treasurer, and 10 of the councillors of the burgh, to be elected by the town council, as provided by the bill, in addition to the nine representatives of shipowners and harbour ratepayers, to be elected as provided by section 6 of the Harbour Act of 1866; and it is further proposed to enact that that section of the Act of 1866 shall be read and have effect

accordingly. The change effected by the bill will introduce into the constitution of the harbour the following alterations: (1) the householders within the district not now within the burgh, but proposed to be included therein, will have conferred upon them a right which they do not now enjoy of having a voice in the election of the town council and thereby of the trustees; (2) the whole town council will not be as at present *ex officio* trustees, but only a selection from among their number, and that selection will not be made by the municipal electors direct, but by the town council. To the first of these alterations the petitioners most strongly object, as it will confer upon municipal districts having now no representation in the harbour trust such representation, and will largely increase the municipal element in the constituency, which has already been largely increased by the reduction of the municipal franchise, and will be still further increased by the admission of female householders under the provisions of "The Municipal Elections Amendment (Scotland) Act, 1881." With regard to the second point, the election of harbour trustees by and out of the town council, the petitioners do not object to this *per se*, but they object strongly to the proposals of the bill, whereby it is sought to continue to the municipality the preponderating influence, which they now possess, in the management of the port and harbour, through their being represented in the harbour trust by 16 of the town council as against nine of the representatives of the shipowners and harbour ratepayers. The danger to harbour interests upon any important question arising in which those interests happen to conflict with those of the town council is one which has greatly increased with the rapid increase of the municipal constituency. The petitioners also object to the proposal of the bill to make the provost, four of the bailies, and the treasurer *ex officio* members of the harbour trust, thereby restricting the free election of suitable members of the trust from the body of town councillors. The bill proposes great alterations in the present constitution of the harbour trust, as well as the perpetuation of the preponderance of town council votes upon that body, and we submit that this is an occasion, being one where Parliament is asked to deal with the constitution of that body, upon which we are entitled to be heard on behalf of harbour interests. It is obvious that the harbour trustees, the majority of whom are town councillors, could not appear against a bill promoted by the corporation, and we therefore are the only and proper parties to raise the necessary issues against the proposals of the bill.

Pope (in reply): If the bill proposed an alteration in the constitution of the harbour trust, this might be an occasion upon which those who are interested in the trust, and who are electors of some of the members of that body, ought to be heard. The proposition, however, of the bill with regard to that trust is to leave the same proportion of town council members and elective members of the trust, the respective numbers of each of those constituents being still 16 and 9, although we are increasing the number of the town council itself from 16 to 25. The *status* of the petitioners as voters remains therefore unaltered. The principle of the second alteration proposed by the bill, viz., the selection of 16 members out of the new town council of 25 by its own members as harbour trustees, is moreover admitted by the petitioners to be a good one. Their objection to the existing preponderance of town council votes at the board of the harbour trust is practically an objection against existing legislation.

Mr. RICKARDS: The bill introduces a larger constituency for the election of the municipal body, and the petitioners say that that will affect the quality of the representatives elected.

The CHAIRMAN: We are of opinion that the *locus standi* of the petitioners should be *Allowed* so far as relates to the change in the mode of election of members of the board, and *Disallowed* in all other respects.

Pember: So as to give us power to raise the question whether there ought to be a greater number of harbour trustees?

Mr. RICKARDS: You would be heard against the whole of clause 29, that being the clause which regulates the number of the harbour trustees, and you can then propose any amendment you like upon that.

The CHAIRMAN: The *locus standi* of the petitioners is confined to clause 29, and so much of the preamble as relates thereto.

Agents for Petitioners, *Martin & Leslie*.

Petition of (2) THE CORPORATION AND BOARD OF POLICE OF GLASGOW.

Extension of Burgh Boundaries—River included within Burgh—Corporations as Protecting Harbour and Shipping Interests—Alleged Conflict of Jurisdictions—Police Control—Rates—Saving Clause.

The bill was promoted by the corporation of Greenock for extending the boundaries of

their burgh, so as to make the municipal boundaries co-extensive with those of police jurisdiction, the latter having been extended under the Greenock Police Act, 1877. The extension of municipal boundaries proposed by the bill, involving a corresponding extension of municipal powers for rating and other purposes, brought within the burgh limits a portion of the River and Firth of Clyde. The neighbouring corporation of Glasgow petitioned against the bill on the ground that they also possessed under statute and charters jurisdiction over the same portion of the Clyde. They urged that the bill would enable the promoters to levy rates on this portion of the Clyde, thus injuring the trade and shipping interests of Glasgow, as well as establishing a conflict of jurisdiction; and they claimed at any rate to be heard to obtain a protective clause similar to one inserted in their behalf in the Act of 1877 for the extension of the police boundaries of Greenock. It appeared, however, that the petitioners possessed jurisdiction over the portion of the Clyde affected by the bill for police purposes only; that the bill did not propose any extension of the police jurisdiction of Greenock, but only an extension of municipal jurisdiction with corresponding powers of rating for municipal purposes; and that no provision of the bill infringed the special protection afforded to the jurisdiction of the corporation of Glasgow by the provision of the Greenock Police Act, 1877:

Held, therefore, that the jurisdiction and interests of the petitioners were not affected by the bill in such a manner as to entitle them to be heard against it.

The *locus standi* of the petitioners was objected to, because (1 and 2) no lands or property, rights or interests of theirs are proposed to be taken or interfered with under the powers of the bill; (3) while the promoters make no admission in regard to any claim made by the corporation and board of police of Glasgow of a right to manage and control the police or to guard the navigation of the portion of the River Clyde affected by the bill, the bill does not contain any provisions altering or in any way affecting the police or navigation of the said

river or any portion thereof, and the petitioners have no right in respect of such claim to be heard against the bill; (4) the portion of the River Clyde affected by the bill is vested in the trustees of the Clyde lighthouses and in the Greenock harbour trustees, and the board of police of Greenock have, under the Greenock Police Act, 1877, jurisdiction over it; (5) the trustees of the Clyde lighthouses and the trustees of the port and harbours of Greenock, and the board of police of Greenock are the only persons who have a right to be heard with reference to any interference with the portion of the Clyde before mentioned, and they do not petition against the bill, and the petitioners therefore are not entitled to be heard; (6) the petition does not show any such interest in the objects and provisions of the bill as to entitle the petitioners to be heard according to practice.

Pember, Q.C. (for petitioners): As alleged in the petition, the bill proposes the extension of the boundaries of the burgh of Greenock, comprehending a considerable portion of the River and Firth of Clyde opposite Greenock. This will injuriously affect the interests of the community of Glasgow, which the petitioners represent. The petitioners by various Acts and charters possess jurisdiction over the River and Firth of Clyde from Glasgow bridge to the Clock lighthouse (comprehending the portion to be included by the bill within the burgh of Greenock) and acting in the execution of the Glasgow Police Acts, they are vested with the management and control of the police of the River and Firth within the same limits. It is of the utmost importance to the free and uninterrupted navigation of the Clyde that no such jurisdiction as is proposed by the bill should be conferred upon the petitioners. The Greenock Police Act, 1877, contains a saving clause to this effect, "nothing in this Act contained shall affect or diminish, or extend or enlarge the powers and jurisdiction of the town council of Glasgow, and the bailie of the River and Firth of Clyde." There is no such clause in the present bill, although clause 20 provides for the extension of the jurisdiction of the promoters as follows: "The provost, magistrates and council of the burgh shall have, possess, and exercise over the burgh and the inhabitants thereof, all the jurisdictions, powers, rights and authorities which the provost and magistrates and town council respectively of the existing burgh now have, possess, and exercise over the existing burgh and the inhabitants thereof, whether at common law, or by statute, or otherwise, including all powers of imposing, levying and recovering rates, dues, taxes and assessments and otherwise, and the

police and other jurisdictions presently possessed and exerciseable in the districts added by the justices of the peace of the county of Renfrew shall be transferred to, and vested in the provost and magistrates of the burgh." Under that clause the corporation of Greenock could exercise jurisdiction over people in ships navigating within the limit now taken, and they could levy rates on ships passing through this portion of their jurisdiction.

Pope, Q.C. (for promoters): They could have no power of rating except municipal rating; they could not rate ships passing through.

The CHAIRMAN: I suppose it is agreed that this extended limit is within the present jurisdiction of the corporation of Glasgow.

Pember: Quite so. Apart from the rights of the corporation of Glasgow under their charters, they claim to be heard as representing the shipping and mercantile interests of Glasgow, between which and the sea the Clyde forms a highway, and they claim to be heard against the policy of handing over a portion of that highway to the burgh of Greenock, which is their competitor in trade, and against the policy of making for the first time a part of the highway of the Clyde part of a municipal burgh, and against the bill generally as an infringement of our rights and charters.

Pope (in reply): This is not a bill seeking to construct works, or to extend the jurisdiction of the corporation of Greenock in any way so as to interfere with any existing jurisdiction. We only desire to extend our municipal boundary to the same line which was, by the Greenock Police Acts, 1877, settled for our police jurisdiction, because we find it inconvenient to have a sort of dual jurisdiction. Under this bill we should only be able to exercise within these limits the powers which the public Acts of Parliament give to municipal corporations. What could the municipal corporation do in this part of the river that could be mischievous? They could not put down pipes or anything that would impede the navigation. If we did anything within this district which would conflict with the jurisdiction of the city of Glasgow, I concede that they ought to be protected as they were protected in 1877. The corporation of Glasgow then alleged that partly under an old charter, and partly under statute, they had the right of appointing a water bailie, and had certain police jurisdiction over a very large area of the Clyde, and when we came as a municipal body to extend our police jurisdiction we gave them a saving clause that "nothing in the Act contained should affect or diminish, or should extend or enlarge the powers and jurisdiction of the Glasgow cor-

poration and the water bailie over the river and firth," but they require no such saving clause here, because we are only by this extension extending our municipal powers, and not our police jurisdiction. The corporation of Glasgow have no municipal power in this part of the Clyde with which our municipal jurisdiction would conflict. They only allege that they possess and enjoy jurisdiction over the river "from Glasgow bridge to the Clock lighthouse." and that they are "vested with the management and control of the police of the river and Firth within the same limits." The Clyde navigation trustees are the only people having jurisdiction over the navigation; the only jurisdiction that the Glasgow corporation have over this part of the river is a police jurisdiction. In order to prevent any question about saving of rights, there is a clause in the bill which says that the protection which the Glasgow corporation had in 1877 shall not be in any way interfered with by the provisions of this bill.

Mr. PARKER: There are some qualifying words at the end of that clause, namely, "except in so far as expressly varied by this Act."

Pope: There is no variation by this Act. The petitioners must show that they are in some way affected. Extending our municipal limits means extending our municipal powers, and nothing more. The Glasgow corporation have no municipal powers over this part of the river, and therefore they are not entitled to be heard.

The CHAIRMAN: The *locus standi* of the Corporation and Board of Police of Glasgow is *Disallowed*.

Agents for Petitioners, *Martin & Leslie*.

Petition of (3) THE CLYDE NAVIGATION TRUSTEES.

Extension of Burgh Boundaries—River included within Burgh—Navigation Trustees—Portion of River affected by Bill outside Jurisdiction of Petitioners—Injurious Affecting.

The bill provided for the extension of burgh boundaries so as to include within the municipality a portion of a navigable river. The trustees charged by statute with the control of the navigation of the river petitioned against the bill on the ground that it might cause injury to the interests of navigation. It appeared, however, that their jurisdiction did not extend over any portion of

the river proposed by the bill to be included within the burgh boundaries, that the bill did not authorize the construction of any works which might interfere with the navigation of the river, as in the case of a former bill (against which the petitioners were granted a *locus standi*) and that the rating and other powers of the bill only related to municipal purposes :

Held, accordingly, that the petitioners were not entitled to a *locus standi* against the bill.

The *locus standi* of the petitioners was objected to, because (1 and 2) no lands or property, rights or interests, of theirs will be taken or interfered with under the bill; (3) the petitioners are a statutory body, and their jurisdiction under the Clyde Navigation Acts is limited to the harbour of Glasgow and that portion of the River Clyde defined by the Clyde Navigation (Consolidated) Act, 1858, none of which is included in the portion of the Clyde affected by the bill; (4) the petitioners have no legal right in that portion of the river affected by the bill, which is vested in the trustees of the Clyde lighthouses, and in the Greenock harbour trustees, and over which the board of police of Greenock have jurisdiction under the Greenock Police Act, 1877; (5) even if the petitioners would have been entitled, had not the Clyde Lighthouses Act, 1871, been passed, to be heard in connection with any interference with the portion of the Clyde below the limits of their jurisdiction, they are, as constituents, since the passing of the said Act of the Clyde lighthouse trusts, represented by that body with regard to that portion of the Clyde, and are not entitled to be heard against the bill, which the Clyde lighthouse trust do not oppose; (6) the petition does not show that the petitioners have any such interest in the objects and provisions of the bill as to entitle them to be heard.

Saunders, Q.C. (for petitioners) : Besides the police powers which may be exercised over this part of the Clyde by the corporation of Glasgow, the Clyde trustees have certain powers over the navigation without the exercise of which the Clyde would almost cease to be a navigable stream. Our jurisdiction is above Greenock, and stops short of the part of the river to which the bill actually relates, but we have an interest in seeing that nothing is done below us to affect the river above. At the present time the police jurisdiction only of Greenock extends over the portion of the river which is proposed by the

bill to be made part of the municipality. The Clyde navigation trustees have no distinct police position, and therefore did not object to an extension of the police powers of the Greenock corporation, which were granted in 1877 over a part of the river opposite Greenock.

The CHAIRMAN: The question is how you can show that the extension of these municipal powers over this part of the Clyde affects the jurisdiction of the conservators above.

Saunders : I submit that a navigation authority above the *locus in quo* proposed to be interfered with have a right to be heard in order to ascertain how the bill may affect them. Clause 4 of the bill contains very peculiar powers, viz., "from and after the commencement of this Act, the burgh shall for all municipal purposes and for the purposes of this Act, be and consist of the district comprised within the limits defined in section 5 of the Act of 1877, and set forth and described in the first schedule to this Act, and the provisions of this Act and of all Acts for the time being in force relating to burghs in Scotland, which return or contribute to return members to Parliament, or to the municipal corporations and magistrates thereof, shall, subject to the provisions of this Act, apply to and have effect in the burgh in the same way and to the same effect, as if the burgh were a burgh which contributed to return a member to Parliament." We ought to be before the committee to see and have defined clearly what is meant by that clause, and what Acts are referred to.

Mr. RICKARDS: The Acts referred to must be public Acts, and the powers conferred upon corporations by them cannot affect navigation in any way.

Saunders : That should be made clear by a protective clause. Then clause 20 of the bill provides, "the provost, magistrates, and council of the burgh shall have, possess, and exercise, over the burgh and the inhabitants thereof, all the jurisdictions, powers, rights, and authorities, which the provost and magistrates and town council respectively of the existing burgh now have, possess, and exercise over the existing burgh and the inhabitants thereof, whether at common law, or by statute, or otherwise, including all powers of imposing, levying, and recovering rates, dues, taxes and assessments and otherwise." This might be construed to empower the promoters to levy rates on shipping passing up and down the Clyde.

Mr. PARKER: The clause is expressly governed by the words "over the burgh and the inhabitants thereof."

Saunders : The *locus standi* of the Clyde navigation trustees was allowed against the

Greenock Harbour Bill, 1880 (2 Clifford & Rickards, 245), although the portion of the Clyde affected by the bill was outside the jurisdiction of the petitioners.

Pope, Q.C. (for promoters): That was a bill for the construction of works; this is a bill merely for municipal purposes.

The CHAIRMAN (to Pope): We need not trouble you further. The *locus standi* of the Petitioners is *Disallowed*.

Agent for Petitioners, *Loch*.

Agents for Bill, *Simson, Wakeford, Goodhart & Medcalf*.

HULL, BARNSELEY, AND WEST RIDING JUNCTION RAILWAY AND DOCK (HUD- DERSFIELD AND HALIFAX EXTENSION AND NEW DOCKS AND WORKS) BILL.

Petition of (1) THE DOCK COMPANY OF KINGSTON-UPON-HULL.

24th April, 1882.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. PARKER, M.P.; Sir JOHN DUCKWORTH; and Sir F. S. REILLY.)

Dock Companies—Additional Dock and Works—Fish trade, Special Accommodation for—Timber Ponds, &c.—Competition—Previous Legislation—Dock Undertaking of Petitioners—Liability of, to be Transferred to Public Trustees—Alleged Depreciation in value of—Competition, improved, not new—Petitioners as Borough Ratepayers—Additional Contribution of Municipal Corporation to Proposed Dock—Representation.

The bill authorised an existing railway and dock company to construct at Hull an additional dock and works, and the corporation of that borough to contribute a further sum of £50,000 towards the undertaking. The petitioners were owners of docks in the immediate vicinity of those of the promoters, and complained that they were at the present time engaged in constructing additional works in connection with their own docks, which would render those proposed by the bill unnecessary, and for this reason they claimed to be heard on the ground of competition. They urged as an additional reason for being heard that they were under a special statutory obligation to consent to the

transfer of their undertaking to public trustees upon the application of the corporation of Hull to Parliament for powers to carry such arrangement into effect, and that the competition arising under the bill would depreciate the value of their undertaking in the event of any such transfer. They also claimed to be heard as ratepayers to a large amount against the clause empowering the corporation to contribute towards the works authorised by the bill:

Held, however, that the petitioners were not entitled to be heard upon any of the grounds alleged, because (1) the bill authorised no new, but only a development of existing competition; (2) that as ratepayers they were represented by the corporation, this question having been already determined upon the occasion of the promoters obtaining their Act of incorporation.

The *locus standi* of the petitioners was objected to, because (1) no lands or property of theirs are taken or affected under the bill; (2) their petition does not show that any such competition between themselves and the promoters will result from the bill as to entitle them to be heard according to practice; (3) competition for the traffic to be accommodated by the proposed dock has already been sanctioned by Parliament between the authorised and existing undertakings of the promoters and the petitioners, and the additional dock accommodation (if any) that will be authorised by the bill is not such an element of competition as to entitle the petitioners to be heard; (4) the petitioners have no right to be heard as regards the proposed contribution to the undertaking by the corporation of Hull, as they are represented by them; (5) they have no such interests in the objects of the bill as to entitle them to be heard.

O'Hara (for petitioners): The bill provides, *inter alia*, for the construction of a new dock and dock works. Our petition alleges that under the Kingston-upon-Hull Dock Act, 1861 (sec. 116) the corporation of Hull are authorised to apply to Parliament for a transfer to public trustees of the Kingston-upon-Hull dock company's undertaking, and the petitioners are bound, upon proper security being found by the corporation, to consent to that application. In 1880, the promoters obtained their Act of incorporation, entitled the Hull, Barnsley, and West Riding Junction Railway and Dock Act,

under which the corporation of Hull were authorised to subscribe £100,000 towards that undertaking and have done so. Since 1880, the petitioners have expended, and are expending large sums of money in providing suitable dock accommodation for the fish trade. The bill proposes to provide similar dock accommodation for the fish trade, and in connection therewith to purchase timber-yards and ponds and so forth. This is in direct competition with the docks and works we are providing for a similar purpose, and is, as we allege, unnecessary, and on that ground we claim a *locus standi* against the bill. We further claim to be heard against the power contained in the bill for the corporation of Hull to subscribe £50,000 towards the proposed dock undertaking. We are the principal ratepayers in the borough and pay one-ninth of all the rates. If the docks proposed by the bill are a success, they will be proportionately formidable competitors with us and depreciate the value of our undertaking, while if they are a failure, we shall have an additional burden put upon us as ratepayers. As regards the question of contribution by the corporation of Hull, we have distinct interests, and are therefore entitled to be heard in accordance with the practice of the Court. In the *Bristol Port and Channel Dock and Warehouses Bill* (3 Clifford and Rickards, 15), the Great Western company would have been allowed a *locus standi* if they had shown that they had a distinct interest as ratepayers. Upon the question of distinct interest I refer also to the *Leeds Corporation Bill* (2 Clifford & Rickards, 181); *Tramways Orders Confirmation (No. 2) (North-East Metropolitan, &c.) Bill* (*Ib.* 317); *Hull Lighting Bill* (*Ib.* 251).

Pember, Q.C. (for promoters): The petitioners are not entitled to be heard on the ground of competition, inasmuch as we are only regulating and giving increased accommodation to the existing trade, not creating a new competition. The question of competition between us is *res judicata*, and was decided by Parliament in 1880. All the bill does is to re-arrange the fish rates imposed by our Act of 1880, and enlarge our existing docks by adding one in close contiguity.

Sir F. S. REILLY: Is there anything in the enacting part of the bill to say that this dock is to be appropriated to the fish traffic?

Pember: No; on the contrary, there is a clause in the bill which says it is to be used for the shipment of animals. The bill merely provides for an amplification of our system as authorised in 1880. With regard to the contribution of the corporation to the works proposed by the bill, and the question of the

petitioners being heard as ratepayers, the cases cited are irrelevant.

The CHAIRMAN: We need not trouble you any further. The Court are of opinion that this is a mere development of existing competition, and that the question about the contribution of the corporation is one that has been already decided, being the same as was raised, when the power was given in 1880 to contribute £100,000.

Agents for Petitioners, *Dyson & Co.*

Petition of (2) THE NORTH-EASTERN RAILWAY COMPANY.

Railway Extension, new Towns proposed to be served by—Competition—Petitioners Owning Railway forming Link in Chain of Through Communication, but without Direct Access—Railway Communication Dependent upon interchange with other Lines—Previous Legislation—Res Judicata.

The bill authorised the extension of an existing railway to the two towns of Halifax and Huddersfield, the railway to be so extended starting from Hull, from which point the railway of the petitioners also ran, to points in the direction of, but not so far as either Halifax or Huddersfield. The petitioners claimed to be heard on the ground of competition, alleging that under existing circumstances all traffic between Hull and Halifax or Huddersfield must pass over their line, whereas the extension proposed by the bill would create an alternative route in the hands of the promoters. It was pointed out on behalf of the promoters that the petitioners had no railway of their own, or running powers into Halifax or Huddersfield, so that traffic over their line from Hull, destined for either of those places, had to be interchanged at intermediate points and conveyed by other companies to either place; that the petitioners were not promoting any alternative scheme for extension of their own railway to either place; and that so far as the promoters and petitioners were, by their existing railways, competitors for traffic from Hull to either Halifax or Huddersfield, the question had been decided upon the application to Par-

liament for their original railway, and was therefore *res judicata* :

Held, that the petitioners were not entitled to a *locus standi*.

The *locus standi* of the petitioners was objected to, because (1) the bill contains no provisions for taking or using any part of the lands, railways, stations, or accommodations of the petitioners, or for running engines or carriages upon or across the same, or for granting other facilities affecting the petitioners; (2) the petition does not show that any such competition between the promoters and the petitioners will result from the railways or works proposed by the bill as to entitle the petitioners to be heard according to practice; (3) the petitioners are not owners, lessees, or occupiers of any of the railways over which running powers are sought by clause 55 of the bill, and have no right to be heard against the granting of such running powers; (4) the powers conferred upon the promoters and other companies by clauses 57 and 58 of the bill are permissive only; (5) as regards the dock proposed to be authorised by the bill, the petitioners have no right to be heard, as they have no property in the docks of the Hull dock company, or interest therein which entitles them to be heard on the ground of competition; (6) they are not entitled to be heard on paragraphs 22, 23, and 24 of their petition; (7) as to the question of rates, the petitioners being within the borough of Hull, are represented by the corporation; (8 and 9) the bill contains no provision affecting the petitioners nor does their petition show it.

Bidder, Q.C. (for petitioners) : The principal ground upon which we claim a *locus standi* is competition. The question arises on traffic to Halifax and Huddersfield. A large traffic is carried on between Huddersfield, Halifax, and Hull, and that traffic at the present time is carried entirely over the North-Eastern railways. It comes, in the case of Halifax traffic, by the Lancashire and Yorkshire, and is exchanged with us at Normanton or at Goole, on the usual terms of interchange; in the other case of Huddersfield traffic, it is carried by the London and North-Western up to Leeds, and is there handed over to the North-Eastern, and carried on by them. The Lancashire and Yorkshire have running powers over our line to Hull, but they are not exercised. We have no running powers into Halifax or to Huddersfield, but we are the only railway by which traffic can get from Huddersfield or Halifax to Hull. Competition in respect of Huddersfield and Halifax

traffic did not enter into the question when the Hull, West Riding, and Barnsley Junction Bill was passed. It may be said that this is only an improvement of existing competition, and though it is true that it was possible for traffic to be carried over existing railways, and for it to be handed over to this company's authorised line, and so to find its way to Hull, there has hitherto been no power in the promoters to get to Halifax or to Huddersfield, either by running powers or by a line of its own. The following cases show the principle on which the Court has acted under circumstances strictly analogous to those of the present case :—*London and North-Western Railway Bill* (1 Clifford & Stephens, 109); *Birmingham and Lichfield Junction Railway Bill* (2 Clifford & Stephens, 223); *Cleveland Extension Mineral Railway Bill* (2 Clifford & Stephens, 228); *Ely and Clydach Valleys Railway Bill* (1 Clifford & Rickards, 18); *London Chatham and Dover Railway Bill*, *Ib.* 97.

The CHAIRMAN : Were you heard in opposition to the line sanctioned in the Session of 1880?

Bidder : Yes; and on the ground of competition. This bill presents the case in quite a different aspect, and the competition is of a different character to what it was when they stopped at Barnsley. We raise in our petition another objection with reference to the power proposed to be given to the municipal corporation to subscribe, but having regard to the decision of the Court in the case of the Hull dock company I will not occupy your time in arguing that point. I rest my *locus standi* upon competition.

Pember, Q.C. (for promoters) : In 1880 and now, the North-Eastern was not, and is not, a carrier either to Halifax or to Huddersfield. It is no more a carrier to Halifax or Huddersfield than any railway in the United Kingdom, which has a system going part of the way on a long route, and forming merely a link in the conveyance of traffic to some distant point, is a carrier of traffic to that point. In every one of the precedents quoted, the petitioning company was a carrier between the points in question. As regards traffic to Huddersfield, the North-Eastern company runs to Leeds, and there it stops. It is possible that it forms part of a route from Huddersfield to Hull, but it is not a carrier all the way to Huddersfield. Then again, as regards traffic to Halifax, the North-Eastern ends at Normanton. We are seeking to be a trader between Hull and Halifax, and Huddersfield, which the petitioners have never tried to be. In 1880, we and the North-Eastern company fought out the question whether we should compete with each other to given common points. We go to Hull through

a country traversed by the North-Eastern, and we go a little further than they do in the direction of Barnsley, but as far as South Kirkley they compete with us, and upon that competition they were abundantly heard, and Parliament authorised our line in competition with theirs. If matters remained now as they were left in 1880 by Parliament, after that competition case was fought out, neither the Hull and Barnsley, nor the North-Eastern would have been carriers either to Huddersfield or Halifax, but if they say they are carriers to Huddersfield or Halifax (and if they are not they cannot be heard at all), so are we. Whether we carry by arrangement with other persons, who have lines to Halifax and Huddersfield, or whether we go there by our own line does not matter. To bring this case within those cited on behalf of the petitioners, it ought to have been something like this. Supposing my line of 1880 had only gone as far as Eastington or Howden, where we first cross the line of the North-Eastern, and supposing after having got that line in 1880 we came in 1882 to extend my line to Barnsley, a fresh competition would no doubt have arisen, because the petitioners would have been able to urge that the competition was only fought out as far as Howden, and we now came to compete with them as far as Barnsley. The extension from Howden would have been analogous to the extensions in the cases quoted, but this is a different case. When we get to Barnsley where we got by our Act of 1880, we are at the end of the North-Eastern system and North-Eastern competition. We are going to start a competition, not with the North-Eastern, but with the companies between Barnsley and Halifax, namely, the Lancashire and Yorkshire, the Midland and the Great Northern, who are the carriers between those points. Supposing at this moment we were not in Parliament for any extension at all, and the North-Eastern were in Parliament for a line from Leeds to Halifax we could not ask for a *locus standi* against such a line, though we should have as good a ground for asking for a *locus standi* as the petitioners now have, i.e., that we could get on to Halifax from Barnsley by arrangement with other companies, and so carry on a competition with them between Hull and Halifax. The petitioners say that every ounce of traffic from Halifax to Hull must pass over their line. We deny that, because as soon as our line is made it will be open to all the companies, who interchange traffic with the petitioners, to interchange traffic with us. Our systems remaining as they are, we are neither of us traders to Halifax or Huddersfield; and we alone are now proposing to become traders to

Halifax and Huddersfield. If a company in the position of the North-Eastern is to be heard against our present proposal on the ground of competition, a little company with a line from London to Southgate would have a right to be heard against a proposal to construct a competing line with the Great Northern from London to Doncaster, on the ground that it formed part of the route between London and Doncaster. The North-Eastern are 18 miles from Halifax, and a still longer distance from Huddersfield. The circumstances in the cases cited were entirely different. In the *London and North-Western* cases for instance, the lines of both companies already communicated with Bolton and Manchester. In the *Birmingham and Lichfield* case, the proposed line would have had the effect of shortening the distance between Birmingham and Derby, both the companies obviously being at Birmingham and Derby.

The CHAIRMAN: The Court is of opinion that the Petitioners are not entitled to a *locus standi*.

Locus standi Disallowed.

Agents for Petitioners, Sherwood & Co.

Petition of (3) THE GREAT NORTHERN RAILWAY COMPANY.

Practice—Railway Companies—Running Powers sought over Railway forming Joint Property of two Companies—Separate and Joint Petitions—Municipal Corporations, Permission Power to Contribute to Railway Undertaking—Railway Company as Ratepayers—Representation—Competition.

The bill proposed to confer upon the promoters running powers over a railway of which the petitioners were the joint owners with the Manchester, Sheffield and Lincolnshire railway company. The two companies had presented a joint petition against the bill, and their *locus standi* upon the joint petition was not disputed. The promoters objected that the petitioners could not be heard also on their separate petition against such running powers. The point was not pressed on behalf of the petitioners, and the Court disallowed their *locus standi* against the clauses conferring such running powers. The bill gave to two corporations of towns, to which it was proposed by the bill to extend the promoters' railways, permissive powers to contribute £100,000

each towards the undertaking. The petitioners claimed to be heard as large ratepayers in both boroughs, and urged that besides the heavy burden to which they would be subjected as ratepayers, such contributions would assist the promoters in competing with them. The bill authorised this contribution for the first time, and the Court, distinguishing for this reason the case of the petitioners from that of the Kingston-upon-Hull dock company, allowed the *locus standi* of the petitioners against the clause and so much of the preamble as related to such contribution.

The bill also conferred powers upon the promoters to run over and use a small portion, including a station, of the petitioners' line, and on this point the *locus standi* of the petitioners was conceded without argument.

On the general question of competition raised by the petitioners, the Court disallowed the *locus standi* of the company, the circumstances being of such a special character as to render the decision of no value as a precedent.

Pope, Q.C., appeared for the petitioners; *Pember*, Q.C., for promoters.

Agents for Petitioners, *Dyson & Co.*

Agent for Bill, *Rees*.

LLANGAMMARCH AND NEATH AND BRECON JUNCTION RAILWAY BILL.

Petition of THE MID WALES RAILWAY COMPANY.

13th March, 1882.—(Before *Mr. PEMBERTON*, M.P., Chairman; *Mr. HINDE-PALMER*, M.P.; *Sir JOHN DUCKWORTH*; *Mr. RICKARDS*; and *Mr. BONHAM-CARTER*.)

This was a case of competition, and depended upon special and local circumstances to such an extent as to render it of no value as a precedent.

The *locus standi* of the Petitioners was Disallowed.

Batten appeared for the Petitioners; *O'Hara* for the Bill.

Agents for Petitioners, *Sherwood & Co.*

Agent for Bill, *Bell*.

LONDON AND SOUTH-WESTERN AND METROPOLITAN DISTRICT RAILWAY COMPANIES (KINGSTON AND LONDON RAILWAY) BILL.

Petition of CORPORATION OF KINGSTON-UPON-THAMES.

18th April, 1882.—(Before *Mr. PEMBERTON*, M.P., Chairman; *Mr. PARKER*, M.P.; *Mr. HINDE-PALMER*, M.P.; *Sir F. S. REILLY*; *Sir JOHN DUCKWORTH*; and *Mr. BONHAM-CARTER*.)

Municipal Corporation, Statutory Power of Appointing Director of Railway Company—Proposed Vesting of Railway in Joint Committee of two other Companies—Joint Committee, Constitution of—Railway Board, how far Affected by new Vesting of Undertaking.

Under an Act passed in 1881 incorporating a company for the construction of a new railway between Kingston and London, the corporation of Kingston were empowered to appoint a director of the company. The Act passed after a struggle between the Metropolitan District and the London and South-Western railway companies, in which the scheme supported by the former company prevailed; but, by arrangement, sec. 74 of the Act authorised these two companies to promote a bill in any future session vesting the undertaking in them and providing for its management by a joint committee, with a further provision that the Kingston and London company should not oppose such a bill except for the purpose of securing the repayment to them of the costs of obtaining their Act. Such a bill was accordingly now promoted by the two companies, and was opposed by the corporation of Kingston, on the ground that it did not provide for the representation of Kingston upon the joint committee, and was therefore an attempt to evade in this respect the decision of Parliament in the previous session. The promoters, on the other hand, alleged that the Act of 1881 contained no provision for the continued representation of Kingston on the joint committee, but only contemplated its representation on the board of the company about to be dissolved:

Held, that the corporation were entitled to a limited *locus standi* against the clauses providing for the constitution of the joint committee, and against so much of the preamble as related thereto, inasmuch as it was hardly to be presumed that the Legislature had meant to confer the right of representation on the petitioners for no more than a single session.

The *locus standi* of the petitioners was objected to, because (1) no land, &c., right or interest of theirs will be taken or affected; (2) the only ground of objection alleged by the petitioners is that they will, under the powers of the bill, be deprived of the right which they at present possess under the Kingston and London Railway Act, 1881, of appointing a director of the Kingston and London railway company, but the bill does not in any way alter the provisions of the Act of 1881 with reference to this matter, and the petitioners have no such interest in the subject-matter of the bill as entitles them to be heard against it; (3) the bill does not contain any provision affecting the petitioners.

Rigg (for petitioners): The bill is entitled "A bill for the transfer of the undertaking of the Kingston and London railway company to the London and South-Western and Metropolitan District railway companies, for authorising deviations in the Kingston and London railway, and for other purposes." In 1881 a bill was introduced under the auspices of the Metropolitan District company, to authorise the construction of a railway, called the London, Guildford and Kingston railway, from the Metropolitan District terminus at Fulham to Kingston, and so on to Guildford. This was opposed by the South-Western company, who introduced a competing bill of their own from Surbiton to Guildford. Both bills were referred to the same committee. The corporation of Kingston and the whole district favoured the Metropolitan District line, and the corporation of Kingston petitioned in favour of it, alleging that Kingston had been treated badly by the South-Western company, and was anxious to be connected with the District company's system. In the result, by negotiations between all the parties, it was arranged that the line from Fulham to Kingston should be made by the Metropolitan District company, and the line on to Guildford by the South-Western; that the South-Western company and the District company should concur in an agreement for working the Surbiton and Fulham line; and the

two companies were to have equal rights of user over the entire line from Fulham to Surbiton. The bill sanctioning those arrangements passed into an Act called the Kingston and London Railway Act, 1881. In that Act, on the application of the corporation of Kingston, a clause was inserted providing for the appointment of a director on the board to represent Kingston, and up to the present time this director has been an active member of the board. The two companies have now brought in a bill to transfer the undertaking of the Kingston and London railway to the District and South-Western companies, who are to manage it by a joint board appointed by themselves, and though they do not in so many words oust the director appointed by the Kingston corporation, they kill the company of which he is appointed a director. The clauses in the bill vest the Kingston and London undertaking in the two companies jointly, and provide for the management of the line by a joint committee, composed of three directors of the South-Western company and three directors of the District company, nothing being said about a director to represent Kingston. The effect will be to transfer all the powers of the Act of 1881 to the two companies. We shall thus be deprived of the right of appointing a director as authorised by the Act of 1881, and the large and populous district which we represent will be deprived of that voice in carrying out the provisions of the Act of 1881 which Parliament then thought essential. This is really a deliberate attempt on the part of the two companies to evade the decision of the Legislature, or at all events, to appeal from the decision of the committee of last year, who inserted the clause that the corporation of Kingston should appoint a director to look after the interests of Kingston. This is practically the same as an amalgamation bill; and upon that ground, if upon no other, the corporation would be entitled to be heard under S. O. 134. (1 Clifford & Stephens, 88 (*text*); *South-Eastern and London and Brighton, &c., Bill, Petition of the Corporation of Hastings, Ib. (Reports)* 149.)

Clerk, Q.C. (for promoters): The Act of 1881 provided that a director, to be appointed by the corporation of Kingston, should sit on the board of the company, that is to say, so long as the company existed; but the Act went on to provide (sec. 74) that if in the next or any future session the two companies, or either of them, should introduce a bill into Parliament transferring to the two companies the powers conferred by the Act upon the company for making the railway then authorised, and for the payment to the company of all the costs of obtaining the

Act, the company should not directly or indirectly offer any opposition to such bill except for the purpose of securing to them such payment of costs. This bill is introduced, therefore, by the two companies not, as the petitioners allege, to evade the decision of the Legislature, but to carry it out. So long as the company exists, and till this bill is passed by Parliament, the corporation of Kingston will be represented upon the board of the Kingston and London company. No provision was made in the Act of last year to secure to them a continuance of that representation when the two companies, in accordance with the provisions contained in section 74, sought powers to transfer the rights of the Kingston and London company to the two companies. If the Kingston corporation wanted to secure a representation upon the joint board when the undertaking was transferred to the two companies, they should have asked for a clause giving them that representation; but they did not do so. The corporation of Kingston have the power of appointing a director "of the company," not of the undertaking.

The CHAIRMAN: Could it have been the intention of the Legislature that Kingston should be represented on a board which was to exist for only one year?

Clerk: The two companies might not have introduced in this session a bill for the purpose of acquiring the powers conferred by the Act of 1881, and in that case the Kingston and London company would have continued, and the corporation of Kingston would still have continued to nominate a director; but as we have done what we were authorised to do by sec. 74, and as there is no provision in the Act of 1881 which in any degree qualifies the transfer of the undertaking to the two companies, the corporation of Kingston have no right to be heard to ask that they may appoint a director to represent Kingston on the joint board. There is no provision in the Act of last year for giving the corporation of Kingston any representation on any board to be created by the two companies the transferees of the undertaking. We are interfering with no right or interest of the corporation.

Sir F. S. REILLY: What they say is that there is no provision for a continuance of a representation of the corporation of Kingston on the joint board.

Clerk: But there is no provision in the Act of last year that, in the event of the companies coming for a bill to take over the undertaking, the corporation of Kingston should be represented.

Sir F. S. REILLY: The transfer contemplated

by sec. 74 is a transfer of the powers conferred for making the railway. There is no reference to the transfer of the powers of managing the railway.

Clerk: The bill provides that the company shall cease to exist, and the only people who have the right to object to that proposal are the Kingston and London company, but they do not object. No body having a right to nominate a director to that board can do so. The Kingston corporation cannot be heard to say that, though the Kingston and London company ceases to exist, they should still have a nominee upon the committee to be constituted by the two companies. No such reservation was made in the Act of last year. The petitioners, therefore, want something inserted in this bill which has not been already secured to them by existing legislation. As to their claim to be heard under S. O. 134, there is nothing about this in their petition, and the S. O. does not refer to a bill of this kind.

The CHAIRMAN: We think that the petitioners are entitled to a *locus standi*. The question is upon what clauses they ought to be heard. We think they ought to have an opportunity of asking for protection, so far as the appointing of a director is concerned.

Rigg: We should bring up a clause. We ask to be heard against the preamble.

Clerk: They ought to be limited to certain clauses. They point to clauses 4, 5 and 6 in their petition.

The CHAIRMAN: I think it will be enough for the petitioners if they have a *locus standi* against these clauses, and so much of the preamble as relates thereto.

Locus standi Allowed against clauses 4, 5 and 6, and so much of the preamble as relates thereto.

Agent for Bill, Rees.

Agents for Petitioners, Wyatt & Co.

LONDON AND SOUTH-WESTERN RAILWAY BILL.

Petition of (1) JAMES ANDREW.

27th March, 1882.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE-PALMER, M.P.; Mr. MELDON, M.P.; Mr. PARKER, M.P.; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Landowner, Building Estate of, Injurious-ly Affected by Railway—Land not taken, but Covenants Indirectly Defeated—Compulsory taking of Portion of Estate already Sold;

Petition of Original Owner against—Injunction, Remedy by, Taken Away by Bill.

The owner of a building estate at Wimbledon sold part of it, subject to covenants for securing the erection of houses of a superior class, and prohibiting the erection of shops, factories, &c. A railway company now scheduled part of the land thus sold, taking power to use it for stations, sidings, accommodations, &c., or for dwelling-houses for the labouring classes. The original owner petitioned, alleging that though no land of his was taken under the bill, the remainder of his building estate would be prejudicially affected if the portion he had sold were, by statute, relieved from the restrictions he had imposed on the immediate purchaser, and if he were thus deprived of his existing legal remedy, by injunction or otherwise, against the breach of the covenants:

Held, upon the authority of cases cited, that this was an injurious affecting of the petitioner's interests entitling him to a *locus standi*.

The *locus standi* of James Andrew was objected to, because (1) no land, house, property, right or interest of his will or can be taken; (2) the only ground upon which he claims to be heard is that of apprehended depreciation in the value of his property in the vicinity of the land proposed to be acquired under the bill, owing to the acquisition thereof by the promoters; (3) the fact that the petitioner formerly owned certain of the lands proposed to be acquired by the promoters, and has parted with such land subject to certain stipulations as to its use, does not entitle him to be heard; (4) the bill does not contain any provision affecting him; (5) he shows no such interest in the objects and provisions of the bill as entitles him to be heard.

Pembroke Stephens, Q.C. (for petitioner): In 1877 Mr. Andrew purchased the freehold of the Woodside estate, about 18 acres in extent, in the parish of Wimbledon, adjoining Wimbledon park, and having on the south the lands and main line of the South-Western railway company. The petitioner proceeded to lay out the estate for building purposes, and with that view constructed suitable roads and other works for the development of the estate. Portions of the land have been sold and

numerous detached houses have been built upon it, with suitable restrictions made by the petitioner for maintaining the character of the buildings. Mr. Andrew, however, still holds about two-thirds of the land. In 1880 the southern portion of the estate was sold by him subject to like restrictions, prescribing the class and style of house and prohibiting the erection of shops of any kind, warehouses, workshops or factories, and providing that no trade or manufactures should be carried on upon the land, nor any machinery be fixed or placed on any part of it. It is obviously most material, in order to prevent detriment to the rest of the estate, that these restrictions should be continued. But clause 26 of the bill authorises the company to take compulsorily the greater part of this southern portion of the estate; the purposes for which it may be taken are defined by the same clause to be "for widening, enlarging and extending their station and siding accommodation, and for roads and approaches, and for other purposes of their undertaking;" and clause 14 further authorises the company "from time to time, if and when they think fit, to appropriate any lands acquired by them under the bill, and which may not be required for the railways and works by the bill authorised, for the purpose of erecting dwelling-houses or buildings for persons belonging to the labouring classes whose dwellings may be required for the work by the bill authorised." If, therefore, the company acquire this land, the petitioner will no longer be able to enforce specific performances of the stipulations under which he sold the land; the company will acquire it altogether free from these stipulations; and, further, in direct contravention of them, may erect stations, engine-sheds, workshops, warehouses or dwellings for the labouring classes, without affording any remedy or any compensation to the petitioner.

The CHAIRMAN: The short point is that, inasmuch as, but for this bill, Mr. Andrew might obtain an injunction to restrain any dealing with this land in contravention of the covenants, you claim to be in the same position before the committee as he would be in the Court of Chancery.

Stephens: Yes, and our case is on all fours with the *Great Western Railway Bill* (2 Clifford & Rickards, 14); and *Cheshire Lines Committee Bill* (3 Clifford & Rickards, 30).

Clerk, Q.C. (for promoters): After looking at the cases cited, I do not think this can be distinguished.

Locus Standi Allowed against clauses 14 and 26 and so much of the preamble as relates thereto.

Agents for Petitioners, *Tahourdins & Hargreaves.*

Petition of (2) METROPOLITAN RAILWAY COMPANY.

Railway Companies Jointly Owning Station—Joint Railway Station, New Line Affecting—One of Owning Companies Assenting to—Joint Committee for Management of Railway and Stations—Railway Company Interfering with Joint Station—S. O. 133 (Interference with Railway Stations, Accommodations, &c.)—Railway Companies' Locus under S. O. 133, General or Limited.

The Metropolitan and the Metropolitan District railway companies were the joint owners of certain lines and stations, including the South Kensington station, used in common by the two companies under a statutory agreement and award, and worked by a joint staff. Part of each station was appropriated to the separate use of each company, but it was provided that if at any time either of the two companies proposed to make any alteration in the stations, &c., the joint committee should decide upon such proposal. The South-Western railway company now, with the assent of the District company, promoted a bill for the construction of a short line joining that part of the South Kensington station assigned for the separate use of the latter company. The Metropolitan railway company petitioned in respect of their joint ownership of the station and scheduled lands, and asked for an ordinary landowner's *locus standi*. The promoters objected that, under the terms of the agreement and award, the portion of the station and line interfered with at South Kensington was the separate property of the District railway company :

Held, that the petitioners were not entitled to appear as landowners, but had a limited *locus* against the clauses sanctioning an interference with the alleged joint station.

The *locus standi* of the Metropolitan railway company was objected to, because (1) the petition does not allege or show that any competition

between the petitioners and the promoters would result under the bill; (2) it does not allege or show that the bill contains provisions for taking or using any part of the lands, railway stations, or accommodations of the petitioners, or for running engines or carriages upon or across the same, or for granting other facilities affecting the petitioners; (3) the petitioners have no such interest in the Metropolitan District railway as to entitle them to be heard on the ground of the interference with that railway proposed by the bill; (4) clause 41 does not in any way relate to the petitioners, who are not entitled to object to the promoters entering into agreements with the Metropolitan District railway company as provided by that clause. The injury apprehended by them from such an agreement is too vague and remote to entitle them to be heard; (5) the bill does not contain any provision affecting the petitioners; (6) they show no such interest as entitles them to be heard.

Worsley-Taylor (for Metropolitan railway company): By clause 4, sub-section 2, it is proposed to construct a short line commencing by a junction with the lines of the District railway company near South Kensington station, and terminating in the parish of St. Luke, Chelsea, near the south-east side of Fulham-road, near the junction therewith of College-street; and by clause 26 the company propose to take land for these works. We claim to be joint owners with the Metropolitan District railway company of the lands which would be thus taken, and we have been served with the ordinary landowner's notice in respect of those lands.

The CHAIRMAN: Do the Metropolitan District company petition?

Worsley-Taylor: No; practically they are backing the bill. We allege that so much of the Metropolitan railway as lies between Aldgate and Kensington High-street is our exclusive property, subject to working powers by agreement with the District company; and the District railway between South Kensington and the Mansion House stations is the exclusive property of the District company, subject to the like working powers by us. The intermediate portions of railway between Kensington High-street, Gloucester-road, and South Kensington, and the stations at those places, are subject to a special agreement between the two companies scheduled to our Act of 1872, and an award by Mr. John Fowler, scheduled to our Act of 1873. By virtue of this agreement and award, and of the confirming Acts, these portions of railway and stations are, for the purposes of the traffic of the two companies, to be considered as their joint property, and are to be worked by

a joint staff, appointed by, and under the control of a joint committee, with a standing arbitrator. The eastern part of the station and railways is appropriated to our separate use, and the western part to the separate use of the District company. It is, however, especially enacted that, if at any time either of the two companies desires to make any alterations in any of these stations, or other buildings or works, the question whether that alteration is to be made or not, shall be referred to the joint committee, and if they differ to the arbitrator. The lines which the proposed railway is intended to join at South Kensington are subject to the special agreement and award, and the lands which may be compulsorily taken under the bill are the joint property of the two companies, and subject to the same agreement. We claim an ordinary landowner's *locus* in respect of this joint ownership.

Clerk, Q.C. (in reply) : The proposed junction is with a portion of the line to the south and west of the South Kensington station, and this portion of the line is the separate property of the District company. This is shown by the terms of the award and agreement together with the confirming Acts. No alteration in the station is proposed except that which will be required in making the junction with the District line : and the part of the station platform which we shall interfere with is the part in which the petitioners have not the slightest interest.

The CHAIRMAN : In this case we cannot allow the petitioners a landowner's *locus standi*, but we will allow them a *locus standi* in respect of possible interference with their station, &c. That would be a *locus standi* against the parts of clause 4 which relate to the *locus in quo*, as well as to clause 41, and so much of the preamble as relates thereto.

Agents for Petitioners (2), *Sherwood & Co.*

Petition of (3) LONDON, BRIGHTON AND SOUTH COAST RAILWAY COMPANY.

Competition between Railways—Junction with Existing Joint Line, by New Railway—Joint Ownership of Existing Line, as Ground for Locus Standi—Traffic, New, brought on Line by one of Joint Owners.

The South-Western railway company sought for power to construct a line forming at Leatherhead a junction with an existing line between Epsom and Leatherhead. This line was the joint property of

the promoters and the Brighton company, but there were two stations at Leatherhead, each company being exclusively entitled to one of them, and the proposed junction would be made at the station and on the land belonging to the promoters. The Brighton company claimed a *locus standi* on the ground of competition; but chiefly in respect of the joint ownership of the railway, over which, if the proposed line were made, new traffic would be brought by the South-Western company, though as there was no joint purse arrangement, the petitioners would derive no benefit from this traffic :

Held, that the petitioners were not entitled to a *locus standi*.

The *locus standi* of the London, Brighton and South Coast railway company was objected to, because (1) no such competition would result from the bill if passed, as, according to practice, entitles the petitioners to be heard; (2) the probability of abstraction of traffic as alleged in the petition, even if true in fact (which the promoters do not admit) does not entitle the petitioners to be heard; (3) the petition does not allege or show that the bill contains provision for taking or using any part of the lands, railway stations, or accommodations of the petitioners or for running engines or carriages upon or across the same, or for granting other facilities affecting the petitioners; (4) the petitioners have no such interest in the object and provisions of the bill as entitles them to be heard.

Saunders, Q.C. (for Brighton railway company) : The portion of the bill to which we object is that authorising the construction of railway No. 1, four miles and 1·80 chains long, commencing in the parish of East Horsley, Surrey, by a junction with the railway authorised by the Act of 1881, being the railway No. 4 shown on the Guildford deposited plans, and terminating by a junction with the company's railway at Leatherhead. There are two stations at Leatherhead, divided only by a road, the one belonging to us, and the other to the South-Western. The existing railway from Leatherhead to Epsom belongs to, and is used in common by, both companies. It forms part of our main line from London through Sutton, Leatherhead and Horsham to Portsmouth, and also to Brighton, via Shoreham, and we are therefore deeply interested in the amount and conduct of the traffic brought on the line. We are advised, and allege, that one of the effects of railway No. 1 may be to

divert from our line to the South-Western traffic now conveyed by us both to London and the South Coast, and that passengers from the district through which the railways will pass, who now avail themselves of our Victoria, London-bridge, and Liverpool-street stations may, by the construction of the proposed railways between Leatherhead and Guildford, be induced to transfer themselves to the South-Western railway, and so deprive us of the traffic we now possess.

Mr. RICKARDS: What are the points of competition?

Saunders: At present every one living at Fetcham or Great Bookham goes to Leatherhead station, and at present the two companies are on equal terms as regards carrying those people to London; but if this line were authorised a person at Fetcham or Great Bookham would find it more convenient to take the South-Western line to London than to take our Brighton line, for if he wanted to use our line he would have still to drive to Leatherhead. The same remark would apply to goods; if the proposed railway were made they would have to be carted a greater distance in order to reach our line than they would have to reach the South-Western stations.

Mr. RICKARDS: What is the population of Fetcham and Great Bookham?

Saunders: No doubt the population is small. The more material question arises in respect of our joint ownership of the Epsom and Leatherhead railway; and as the South-Western company are proposing something that will have the effect of dealing with the joint line, we say we ought to be before the Committee for the purpose of seeing that our interests are guarded.

Mr. RICKARDS: The only way the joint line will be affected will be by bringing more passengers upon it.

Saunders: But that will not bring more grist to our mill. It is not a joint line in the sense that all additional traffic, from any source, helps our receipts. Each company has the right of using the line free of toll. If passengers use our trains they pay us; if they are conveyed in South-Western trains, the line will be more used, but we shall not get a penny more, while we shall be at the same cost of maintaining it.

(Clerk, Q.C. (for South-Western company) was not called on.

Locus Standi Disallowed.

Agents for Petitioners, Dyson & Co.

Agent for Bill, Rees.

LONDON AND SOUTH-WESTERN SPRING WATER BILL.

Petition of (1) OWNERS, &c., OF MILLS, &c., ON THE RIVER WANDLE; (2) MILLOWNERS AND OTHERS ON OR NEAR THE RIVERS HOGSMILL, WANDLE, MOLE, &c.

22nd March, 1882.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. PARKER, M.P.; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Underground Water, Common Property — Water Flowing in Defined Channel Underground, Property in—Chasemore and Richards, Case of, Discussed—Springs, Rising to Surface in Large Body of Water—Bournes, Flowing Partly on Surface and Partly Underground.

Practice—Evidence, Scientific, Heard for Petitioners—Rebutting Evidence Offered by Promoters, but Rejected—Prima facie Case only required by Court.

The river Wandle is fed not by tributary streams, but by springs issuing from the chalk in considerable bodies of water at Carshalton. A company sought for power to establish wells and a pumping station about half-a-mile from the source of these springs. The bill was opposed by mill-owners, and owners of residential property and fisheries on the Wandle, who alleged that the river might be seriously injured or even destroyed by the proposed pumping operations, which would not only affect the underground springs, but would directly affect the surface stream. The promoters relied upon the decision in *Chasemore v. Richards* that underground water is common property. The petitioners alleged that this decision did not apply to the case of water flowing in a defined channel underground, and called evidence to show that the springs in question had such a channel: *Held*, upon this evidence, that the petitioners were entitled to a *locus standi*.

Engineering witnesses being called by petitioners in support of their case, the promoters suggested that the Court had only heard opinions and inference, and proposed to call rebutting testimony:

Held, that it was for the Committee to hear and decide upon the scientific evidence on both

sides, the Court only having to satisfy itself that the petitioners had made out a *prima facie* case entitling them to go before the Committee.

The *locus standi* of owners, &c., of mills and other property on the river Wandle was objected to, because (1) the bill does not contain any power to take or abstract the water of the river Wandle or of the two branches referred to in the petition, or any power to take any streams or surface water or any water whatever other than the springs or waters mentioned in the bill, which are wholly underground (as indeed is admitted in the petition) and this power does not entitle the petitioners to be heard; (2) the substantial injury they complain of is that which would result from the abstraction of underground waters and they have no such right in those underground waters as entitles them to be heard against the abstraction thereof; (3) no lands, &c., of the petitioners will be compulsorily taken under the bill; (4) no ground is alleged entitling the petitioners to be heard.

The *locus standi* of (2) millowners and others on the rivers Hogsmill, Wandle, Mole and others, was objected to on similar grounds.

Bidder, Q.C. (for petitioners (1)): This is a bill incorporating the London and South-Western spring water company, and authorising them to construct works and supply with spring water Epsom, part of Wimbledon, Putney, Barnes, Mortlake, Roehampton, and other places in the county of Surrey. The company propose to obtain their supply of water wholly by two pumping stations, and for that purpose to sink two wells. One of these pumping stations and wells is to be constructed in the parish of Carshalton near to the bend of one of the two branches which, united, form the river Wandle, and is so placed as not only to obtain the water which percolates through the surface and underlying strata, but also to intercept the streams which flow from the chalk hills to the south, and which come to the surface at Carshalton near this pumping station, and those from the branch of the Wandle. The Wandle is a river which depends almost entirely on springs fed by waters from the chalk hills. It has no tributary streams and derives hardly any supply from the land or surface drainage; and the interception of these springs, which will be effected by the company's pumping station, will practically abstract the whole of the waters of this branch of the river. In several ways the river Wandle is unique. From its source to its confluence with the Thames it is only seven

miles long, but it has no fewer than thirty-six mills dependent on the motive power it supplies, and their rental is at least £8,000 a year. Besides the millowners, others of the petitioners are owners, lessees, or occupiers of residential and other property and fisheries on the banks of the river, which forms an ornamental water and a great attraction to these residences; and the abstraction of this water will destroy the value of the mills and greatly injure the value of all the other property of the petitioners. Had the company sought for power to take the water directly from the river, they would, by the Standing Orders, have been compelled to give notice to all the mill owners affected and to provide compensation water; but by the plan embodied in the bill the company will be able to abstract all the water of the river without notice and without compensation to anybody. No doubt they will contend that, according to the principle laid down in *Chasemore v. Richards* (29 L.J., Exch., 81; 5 Jur., N.S., 873; 2 H. & N., 168, &c.), there is no property in underground water, but this case does not come within the decision. The stream of the Wandle does not arise from the gradual addition of tributary rivulets, but issues from the ground to the surface in one body. The promoters, therefore, seek power not only to do what has been done in other cases, that is, draw off water which is common property, and which has percolated through the earth, but to intercept a defined underground stream, and take the water from the river itself. The head of the river is at Carshalton, where a large number of springs, some of them as big as brooks, come to the surface, and thence the Wandle proceeds as a full-grown river to the Thames. Thus it is not dependent on the watershed of the neighbourhood, and is very slightly affected by local rains, but practically is fed from the chalk hills lying far to the south; and the water which comes to the surface at Carshalton flows in a defined stream for a long way before it reaches that point.

The CHAIRMAN: Are we to go into the question how this river is supplied?

Bidder: That question is raised by the objections. The promoters say they touch nothing but underground water, which is nobody's property. I join issue with them on that point, and say that this is underground water which flows in a defined channel, and is therefore the subject of property. The principle on which the Court has proceeded in dealing with these cases of underground water is very fairly summed up in 1 Clifford & Stephens (*text*), 23. The cases reported are:—*Birkenhead*

ment Commissioners Bill (1 Clifford
hens, 11); Bradford Waterworks and
ment Bill (Ib. 12); Southport Water
13); St. Helen's Water Bill (Ib. 14). As
ements in the petition that this under-
water flows in a defined channel are
ged by the promoters, I must call
e.

Mr. Mansergh, C.E., said he had carefully
ed the Wandle, and described how the
of the Wandle came to the surface at
ton. The springs came to the surface
large bodies of water, each making a
ok in itself. For ages these springs had
suing from the chalk at that point, and
therefore perfectly clear to his mind
softer part of the chalk having been
ed, and the harder flints left, these
must have made a defined channel under-
for a certain distance before the water
ut. The company proposed to sink a
id would have to put down pumps to a
onsiderably below that of the springs.
ult would be that they might stop every
these springs with the greatest ease and
use the outflow to cease.

RICKARDS: That is to say, the pumping
take away water that would otherwise
en on the surface?

ess: Yes.

RICKARDS: When this pumping took place,
e was water at the time on the surface,
that be drawn away?

ess: Yes it would. When the water
out of the ground in these springs it first
lates in large square ponds and then
own the river. As the strata there are
able, the promoters, if they get the
they now seek, could pump sufficiently to
these ponds.

Re-examined by Balfour Browne (for
ers): The question whether the pumping
affect the springs would depend on the
y of water pumped, and also on what
a year it was, whether there was a
am or maximum rainfall. As to the
l underground channel in which witness
d this water ran for a considerable
e, of course he had no means of looking
h the crust of the earth, nor could he
from what direction the water came.
ly it followed something like the line of
lley on the surface. He judged there
defined channel from the appearance of
ream as it comes out of the chalk.
pumping station of the company
he believed, be half-a-mile distant
he ponds. The Croydon local board,
waterworks were said to be at a much

less distance, pumped from the chalk, in exactly
the same way, he supposed, that this company
would pump. It was possible, or even probable,
that they also might be pumping surface water
from the Wandle, or tapping a well-defined
underground stream.

Re-examined: It is a fact that pumping in one
place draws away water for miles around. It is
not the fact that the Wandle runs throughout
its whole course on an impervious bed. As a
matter of fact the bed of the river at Carshalton
is gravel, and for some distance the river is on
a chalk bed.

Mr. Baldwin Latham, C.E., Examined by
Bidder, said he resided at Croydon, and had
made the Wandle a special study for many
years. In his opinion the springs that rose to
the surface at Carshalton flowed in a defined
channel before they came to the surface. In
this district there was a very large number of
wells which showed clearly the direction in
which the water was flowing, and he had
himself been able to map the whole of these
underground courses, so that at any point miles
away he could intercept the water now coming
out at Carshalton. These very springs had
been traced back, and had been mapped, showing
their course for some miles. They did not
follow the natural fall of the country, but ran
in the direction of Carshalton. In this district
there were streams, or bournes, flowing over the
surface and then going underground and coming
out again at Carshalton. When from prolonged
wet the chalk was super-saturated so that the
amount of water flowing was greater than the
underground channels would accommodate, the
water burst to the surface and made a bourn.
At Croydon the water flowed at times for seven
or eight miles over the surface. At other times
it flowed underground in a channel as clearly
defined as that of a stream on the surface. For
the last five years he had been able to predict
the exact date and spot at which these bournes
would break out. From his knowledge of the
district, and his experience elsewhere, it was his
opinion that if the promoters pumped sufficiently
at their pumping station they could take surface
water, not only from the ponds, but from the
other branches of the Wandle.

Cross-examined: It was not a theory of his
that all underground water flowed in a defined
channel; the course of some of it could not
be well-defined.

The CHAIRMAN: Have there been any legal
decisions to the effect that no one has property
in really ascertained underground streams—for
instance, the river Mole?

Bidder: I do not recollect any such decision.
Could it be said that any landowner might help

Littler, Q.C. (for corporation of London) : The proposed fish market will be in direct competition with Billingsgate of which the corporation are owners. In the year 1326, Edward III. granted a charter to the corporation of London, confirming unto the citizens that no market from thenceforth should be granted by him or his heirs to any other persons within seven miles of the city; and this charter was made and passed with the consent of Parliament and had in law the force of an Act of Parliament. It was subsequently confirmed on several occasions, and particularly by a charter (14th Charles I.) which was recited and confirmed by a charter of Charles II. Again by the statute, 2 William and Mary, c. 8, entitled "an Act for reversing the judgment in *quo warranto* against the City of London, and for restoring the City of London to its ancient rights and privileges," the *quo warranto* was expressly reversed, and all the old charters and privileges of London were revived.

Mr. RICKARDS: Do the corporation claim a monopoly of the markets?

Littler: Yes. In the case of the *Islington Market Bill*, which came before Parliament in 1835, the corporation omitted to petition against the bill in the Commons, but did petition in the Lords, where the promoters objected that the charter of Edward III. was bad. That legal question accordingly came before the House of Lords, who invited the opinion of the judges, and they delivered their opinions to the effect that the charter had all the effect of an Act of Parliament (2 Clark & Finnelly, 513). The result was that a clause was inserted in the bill to give compensation to the corporation. Again in 1878 two persons named Lowe sought to establish lairs in different parts of the Metropolis, but on the opposition of the corporation the courts of law decided that they were not entitled to establish those lairs. It may be said that other markets have been started in London against us—for example, Spitalfields, Covent Garden, and Hungerford. Spitalfields was established by a charter granted by James I., after the date of the *quo warranto*, and this is one of the charters expressly declared by the Act of William and Mary to be illegal. As to Covent Garden and Hungerford markets, the charters in those cases were granted before the *quo warranto*, and though they were an infraction of the rights of the city, the city did not interfere. We have laid out £400,000 in reconstructing Billingsgate market, which is sufficient for all the fish that goes there. The only complaint about Billingsgate is that the streets around it are blocked by the vans which bring railway-

borne fish. A market at Shadwell would not cure that evil, inasmuch as it would be a market for sea-borne fish, and would therefore be a market competing with us, without meeting the complaint raised as to Billingsgate. The Shadwell market would also be within seven miles of the city, and would thus be in derogation of the ancient rights of the corporation, which on several occasions have been distinctly recognised by Parliament. Moreover the corporation are now promoting a bill to utilise an inland market, constructed by them for fruit, vegetables, and flowers, so as to accommodate the railway-borne fish trade, and to prevent overcrowding at Billingsgate. That market has a most central position, and is in direct communication with every railway running into London. Its site is therefore far more convenient than that of Shadwell, which is remote and entirely unprovided with any railway communication. We ask to be heard—first, on the ground that the bill proposes to do what will be an infraction of our charter; secondly, on the ground of competition with our existing market; and, thirdly, because we are the only public authority who can be heard on this matter.

Stephens, Q.C. (for promoters): As to competition we say it is not such as entitles the corporation to be heard. The fact is that the competition of which they are afraid is not competition with Billingsgate, but with another and different market referred to in the petition for which the corporation have brought in a bill. The legality of the charter is taken for granted, but is really far from clear.

The CHAIRMAN: The Court cannot enter into the question of the legality of the charter, and, as there will clearly be an interference with rights claimed by the corporation, we allow the *locus standi*.

Locus standi of the Corporation of London Allowed.

Agent for Corporation of London, Sir T. J. Nelson.

Agent for Bill, Bell.

STREET TRAMWAYS EXTENSIONS BILL.

OWNERS, LESSEES, AND OCCUPIERS OF HOPS, AND WAREHOUSES, &c., ABUTTING ALONG WHICH THE TRAMWAYS ARE TO BE MADE.

32.—(Before Mr. PEMBERTON, M.P., ; Mr. PARKER, M.P.; Sir JOHN H; and Sir F. S. REILLY.)

Owners and Occupiers of Houses, &c. Allegations in Petition—Public Tramways—Locus Limited to Terms 135 (Frontagers' Petitions against Bills.)

of a number of owners and occupiers of property along the proposed line of tramways, who allege injury to their private and business premises, raised the question of public convenience with regard to the laying down of tramways generally. The promoters conceded the right of the petitioners to be heard under S. O. 135, but they refused their right to raise the general issue: the *locus standi* of the petitioners is limited to the terms of S. O. 135.

The *locus standi* of the petitioners was objected to (1) they are not inhabitants of the district injuriously affected by the proposed tramway; (2) no lands or property, rights or interests of theirs will be interfered with; (3) the petitioners describe themselves as owners and occupiers, but do not claim to be frontagers under S. O. 135, and the promoters say they are frontagers within the meaning of the bill. In any case the petitioners cannot claim to be frontagers in that capacity and no further, generally against the bill.

Worsley Taylor (for petitioners): The petition states "The humble petition of owners, of property, being a house, shop, or warehouse, street or road, through which it is proposed to construct a tramway, &c.," and the petition closely follows the words of S. O. 135. The objections of the petitioners are appended to the petition so that there is no doubt they are valid.

Rees (for promoters): We concede the petitioners have a *locus standi* limited to the terms of S. O. 135. The petition, however, is limited to complaints of injuriously affected frontagers "in the use or enjoy-

ment of their premises, or in the conduct of their trade or business," but seeks to open up the whole question of the advisability of tramways in general, the obstruction caused by them to vehicular traffic and foot passengers, the balance of convenience to persons travelling by the tramcars as compared with the public inconvenience caused, and urges that "the interests, comfort, and convenience of the general public . . . should be considered before the section of the public who use tramway cars." From those allegations it appeared to the promoters that the petitioners were endeavouring to get a general *locus standi* against the bill so as to be able to go into the whole question of the policy of tramways. This is not the first time such an attempt has been made, but in all those cases the *locus standi* of the petitioners has been limited to the terms of S. O. 135. (*Lea Bridge, Leyton, and Walthamstow Tramways Bill*, 3 Clifford & Rickards, 73; *Kings Cross and City Tramways Bill*, 2 Clifford & Rickards, 107; *Brentford and Isleworth Tramways Bill*, *Ib.* 142.)

Worsley Taylor: We are content to take a *locus standi* under S. O. 135, and should not have been brought here to assert our right to be heard.

The CHAIRMAN: The *locus standi* of such petitioners as are frontagers is *Allowed* under S. O. 135.

Agents for Petitioners, Cruse & Clay.

Agent for Bill, Rees.

LONDON, TILBURY, AND SOUTHEND RAILWAY BILL.

Petition of (1) THE SCHOOL BOARD FOR LONDON.

22nd March, 1882.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. PARKER, M.P.; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Railway—Additional Land required for Works—School Board—Local Authority for Educational Purposes—Displacement of Population under Compulsory Powers of Purchase—Removal of Children to other Parts of London—Additional Accommodation—Obstruction of Access to Schools—Quantum of Injury.

A railway company applied for a bill authorising them to acquire additional lands, and construct new railways and works within the metropolis. The petitioners were the school board of London, who claimed a

locus standi against the bill on the following grounds: (1) That the displacement of the population caused by the authorised acquisition of lands would necessitate the removal of many of the children, who attended the school in the immediate vicinity of the proposed railway works, to other parts of London, where the schools were already full, and that consequently fresh accommodation would have to be provided at a great cost, and their present school rendered less advantageous for its intended purposes; (2) that, by the stopping up of one public way at least, the bill would authorise an obstruction of access to the school in question, as well as compel many of the pupils to go by a more circuitous route to it on account of the interposition of extensive railway works between their homes and the school:

Held, that in accordance with a previous decision the displacement of population involved by the bill was not a sufficient ground for a *locus standi* being granted on the first ground; and that on the second point raised by the petitioners, the obstruction of access was not sufficient to entitle them to be heard.

The *locus standi* of the petitioners was objected to, because (1) neither the school referred to in their petition, nor any of their property will be taken under the powers of the bill; (2) the injury which the petitioners apprehend as a consequence of the exercise of the powers sought by the bill is one of so remote and doubtful a character as not to entitle the petitioners to be heard according to practice; (3) the petitioners allege that in consequence of the displacement of children now inhabiting houses which may be removed, much of the expenditure already incurred by them will have been incurred uselessly, but in this respect the petitioners are no more entitled to be heard than other persons who may have expended money in the neighbourhood of the property to be taken, by which they derive a revenue from supplying the wants of the persons residing on that property; (4) if any children resorting to the said school are displaced, it does not necessarily follow, nor is it so alleged, that they will have to be provided for elsewhere within the metropolis at an additional cost to the petitioners; (5) the petition discloses

no ground for a hearing according to the practice of Parliament.

Bidder, Q.C. (for petitioners): We claim a *locus standi* against the bill on similar grounds to those urged against the *London River-side Fish Market Bill* (*supra*, p. 182), but for an additional reason also. The bill authorises the promoters to acquire additional lands and construct additional railways, some of which are in the immediate vicinity of one of our board schools. The school board of London was called into existence by the Elementary Education Act, 1870, and in the Elementary Education Act, 1876, is expressly designated as the local authority in connection with educational purposes. An important part of its duty is to provide school accommodation for the population of the metropolis and its local divisions and subdivisions. There is always great difficulty in procuring eligible sites for the schools. The school affected by the bill is situated in Berners-street, in the parish of St. George's in the East, and is attended by large numbers of children from that immediate neighbourhood. The effect of the compulsory powers of purchase conferred by the bill will be to scatter large numbers of the population, whose children attend this school, and remove them to other parts of London, where fresh accommodation will have to be provided for them, as all the district schools in other parts are already well filled; and as a consequence of this a large amount of money will have been uselessly expended on the existing schools in Berners-street. The other ground of our objection to the bill is the fact that it will injuriously affect the free access to our school from various parts of the district by severing a part of the district from the rest by the proposed works, seriously inconveniencing the children, and rendering the present school less adapted for the wants of the district.

[A plan was here put in, by which it appeared that the promoters took a large quantity of land for the purposes of their railway and works, in doing which they cut off two existing accesses to the board school, which school was situate to the east of the ground proposed to be taken, and at a distance of about 200 yards; and it further showed that on the west of the land proposed to be taken, the ground was occupied by sugar refineries and not by houses. On reference to the deposited plans, it appeared that one of the accesses was to be stopped up, no notification being made that the other was to be.]

(*Per Cur.*) One of the accesses is not a public way.

Bidder: The case of the *Hull and Barnsley*

y Bill, *Petition of the Trustees of Christ and Sculcoates Schools* (2 Clifford Roads, 249), is almost identical with this.

CHAIRMAN: There the immediate access interfered with. The utility of the school not be affected here. It is not only the men who are obstructed, but the public. It is not the street authority to raise the

er: Our interests are distinct and separate.

CHAIRMAN: We need not call upon the promoters to argue the first point, viz., displacement of the population, as against the petitioners, raised by Mr. Bidder, that question we must adhere to our point in the *London River-side Fish Market*

. Rickards (for promoters): The bill does not empower the promoters to impede the public access to the school, or prevent the public from entering it as they at present do. No injury that will be caused to the children; they will have to go a little further in coming to the school from certain parts of the district. The interference with access alleged here is very different to what occurred in the *Hull and Barnsley* case that has been decided; there there were no means of getting to the premises except by the back door. Here there is only one public way stopped up out of the way and no entrance is impeded, but access is made more circuitous from one part of the

er: My petition alleges that two public ways will be stopped up, and that statement is challenged by the objections.

. Rickards: The plans only show the stopping up of one public way, and the clause in the bill only authorises us to stop up one

RICKARDS: It is admitted that one access is stopped. The question is one of

Rickards: In the *Hull and Barnsley* case there was actual obstruction of a doorway. The public way leading to the school is not stopped up, but no injury can be done to the school itself for the purposes for which it was built. It is not like the case of obstruction of business premises.

CHAIRMAN: Ought we not to put the question of education as high as that of an ordinary business?

Rickards: Any tradesman in this neighbourhood who will have to drive further round the houses of his customers from his shop is equally entitled with the school board to a *locus standi* in this case.

The CHAIRMAN: We do not think the petitioners have shown sufficient ground upon their second point for a *locus standi* in this case, and the Court therefore *Disallow* their *locus standi* on both points.

Agents for Petitioners, Gedge & Co.

Petition of (2) THE THAMES DEEP WATER DOCK COMPANY; (3) OWNERS, LESSEES AND OCCUPIERS OF LEGAL QUAYS, SUPPERANCE WHARVES AND OTHER PREMISES IN THE CITY OF LONDON.

Dock and Railway Companies—Power of Agreement between, under Bill—Apprehended Combination of—Traffic Facilities—Competing Dock Company—Owners, &c., of Wharves and Quays—Previous Agreement—Existence of, as Evidence of animus of Parties—Railway Commissioners—Revision of Agreements by—Non-Incorporation of Railways Clauses Act, 1863.

A railway bill contained a clause empowering the company to enter into agreements with a dock company for the interchange and accommodation of traffic, the division and appropriation of revenue, and other objects. A rival dock company, and certain owners of wharves, &c., petitioned against the insertion of such a clause, on the ground that it would enable the promoters and the dock company to form a combination between themselves hostile to the petitioners, and to carry on an undue competition with them. Both petitioners had been heard against a similar clause, authorising the like agreements, contained in a bill promoted during the same session by the dock company; and they directed the attention of the Court to the non-incorporation in either bill of the Railways Clauses Act, 1863, which (they contended) was done with a view to oust the jurisdiction of the railway commissioners as to revision of any such agreements as those contemplated to be entered into under the clause objected to. The petitioners also cited certain heads of agreement, that had previously been drawn up between the parties, which, they maintained, even if not in force at the present time, sufficiently showed the *animus* of the promoters with

regard to the agreement contemplated under the bill. The promoters denied that the agreement clause in the bill was intended, or would empower them, to show any undue preference towards the dock company at the expense of other interests: *Held*, however, that the case could not be distinguished from that of the petitioners against the corresponding powers contained in the dock company's bill, the *locus standi* of the petitioners being accordingly allowed against the agreement clause in the bill.

The *locus standi* of the Thames deep water dock company was objected to, because (1) the petitioners refer to powers which are sought by the bill for the promoters and the East and West India dock company to enter into agreements with respect to certain matters, and they claim to be heard against the power of entering into those agreements, but they do not show that they have any such interest in the subject-matter of the said agreements, or that their rights and interests can be affected under any such agreements in such a manner as to entitle them to be heard according to practice; (2) the promoters deny that the making of any such agreements as would be authorised by the bill could exclude the petitioners from the effective use of the promoters' railway, or that it would in any way limit any rights which the petitioners now possess in or over the promoters' undertaking, or against the promoters; (3) the petition does not allege, nor is it the fact, that the petitioners may be injuriously affected by the bill in such a manner as to entitle them to be heard according to practice.

The *locus standi* of owners of legal quays, sufferance wharves, and other premises was objected to, because (1) the petitioners appear to apprehend that an agreement with the East and West India dock company may be made by the promoters under the powers of the bill, which would enable the promoters to charge the East and West India dock company preferential tolls and rates to the prejudice of the petitioners. The bill has not that effect, and, even if it had, the petitioners are not affected by the bill (nor does their petition allege that they are) in any manner which entitles them to be heard according to practice; (2) if the petitioners are affected by the bill at all in any such manner as they suggest, it will be due to the provision of more convenient accommodation for wharfage and warehousing, and they may thus lose a portion of their business, but it is not admitted that any such effect will result

from the passing of the bill, nor, if it should result, have the petitioners any right to be heard on that ground against the bill. Indeed, so far as the promoters understand the petition, the injury to which the petitioners refer as likely to result would be due not to the bill, against which the petition is directed, but to the authorisation (if Parliament should think fit to authorise it) of the new dock, which the East and West India dock company seek power to construct under a bill now pending in Parliament, but not under this bill; (3) the petitioners set out at some length extracts copied *verbatim* from Parliamentary reports relative to the amalgamation of railway companies and of railway and canal companies. Those extracts do not appear relevant to the present bill, by which it is not proposed to authorise any such amalgamation; (4) the petition discloses no ground for a hearing according to practice.

Pembroke Stephens, Q.C. (for the Thames deep water dock company): The petitioners obtained a *locus standi* against the *East and West India Dock Bill* (*supra*, p. 138), which contained a power for the dock company to agree with the London, Tilbury, and Southend railway company. This bill is promoted by the latter, and contains conversely a similar power for the companies to agree, so that if one bill were thrown out the required power of agreement would be given by the other. The agreement clause 26, is as follows: "The company on the one hand and the East and West India dock company on the other hand may enter into and carry into effect an agreement or agreements with respect to all or any of the following matters, namely, the conveyance, interchange, and accommodation of traffic coming to or going from the undertakings of the two companies, whether as now existing, or as hereafter extended or authorised, the division and appropriation of revenue arising from that traffic, the appointment by the dock company of directors of the company, not exceeding two in number, and any other matters incidental thereto." In point of fact heads of agreement have already been negotiated and entered into in writing between the two companies bearing date 27th September, 1881, by which the railway company agrees, when its net earnings by dock traffic shall exceed £50,000 a year, to allow the dock company a rebate of 25 per cent. on all such excess, and agrees to run half-hourly trains from 7 a.m. to 6 p.m., between Fenchurch-street and Tilbury station, calling only at Stepney and the Tilbury dock station, and so excluding the petitioners' dock, and giving the East and West India company a number of tickets for their servants

ents at special rates, and agrees to terminal facilities and rates on all traffic, and to provide special rolling stock for certain traffic, and (by article 20 of the bill) agrees that the special rates agreed between the railway company and dock company for conveyance of goods and passengers shall not be conceded by the railway company to any other dock company which may hereafter establish docks not offering such advantages to the railway company. The bill is in substance the agreement, if not actually in substance, but the railway company have it in contemplation to carry into effect if clause 26 is inserted. Substantially, such an agreement would give the railway company a monopoly of the traffic on the railway company's line for dock traffic and exclude the traffic of the petitioners' docks therefrom. Such a project is the result of an amalgamation between the promoters and the dock company against our authorised docks, and of the nature of an amalgamation, against which we have an undoubted right to be heard. The provisions of the dock company's bill, so in this, the provisions of the Railways Clauses Act, which would render the agreement subject to revision by the Railway Commissioners, are incorporated.

Mr. Browne (for owners, &c., of legal wharves, &c.): The petitioners appeared against the East and West India dock company's bill, which was referred to by Mr. Stephens, and on its being brought that the Railways Clauses Act, 1863, was incorporated in the bill, so as to make the agreement between the dock company and the railway company subject to revision by the Railway Commissioners, their *locus standi* was at once established against the agreement clause in that bill. The same argument *mutatis mutandis* applies in this bill also. The agreement clause in the present bill is in effect the same as in that bill, and the effect of its insertion here being that it may or may not stand in one or other bill, we are equally entitled to be heard here as there. It would have the same injurious effect upon our business in whichever bill it is contained. If such docks are being made further down the river, it will be impossible for my clients, the owners of sufferance wharves, to have their goods conveyed to their premises by lighters, as they will consequently be obliged to have their goods conveyed by railway, and under those circumstances, if the promoters are allowed to make such an agreement, they will be able to compete unfairly with the petitioners. The special Acts of the London and Tilbury company and the dock com-

pany would, in the absence of the incorporation in those Acts of the Railways Clauses Act, 1863, oust the jurisdiction of the Railway Commissioners, who would otherwise be able to prevent the agreement between the companies being so framed as to allow undue preference to be given to the dock company's traffic by the promoters.

A. G. Rickards (for promoters): As regards the Thames deep water dock company, they were heard against the East and West India dock company's bill, presumably on the ground of competition. The bill is not one for the amalgamation of the East and West India dock company with the Tilbury railway company. As to the agreement clause (26) of the bill, there is nothing in it about preferential rates, nor is there anything authorised by that clause which could not be done without it, except the appointment by the dock company of two directors of the railway company.

The CHAIRMAN: We should not be inclined to allow a *locus standi* on the question of that alteration in the constitution of the board.

Mr. RICKARDS: If such an agreement as that contemplated by clause 26 of the bill were entered into, the railway company would be able to enter into a sort of confederacy with the India dock company to the prejudice of rival docks.

A. G. Rickards: There is nothing to prevent the company from entering into any agreement with any of their customers. The reason we put in this clause is, that we derive a great deal of traffic from the East and West India docks, and we wish to make agreements with them for an interchange of that traffic, not at the expense of other people, but for our mutual convenience. There is nothing in the bill to authorise preference to the East and West India docks.

Mr. RICKARDS: The fact that this company is entering into a sort of partnership with the India dock company affords the petitioners grounds for apprehension that an undue competition will be carried on by them.

The CHAIRMAN: Then the petition of the Thames deep water dock company says, that an agreement has actually been come to between the London and Tilbury company and the East and West India dock company.

A. G. Rickards: No such agreement ever existed.

Stephens: We assert in our petition that it did exist, and that allegation is not traversed by the objectors.

A. G. Rickards: We contend that clause 26 would not enable the petitioners to make such an agreement.

The CHAIRMAN: The Thames deep water dock company have a right to take the existence of the recited heads of agreement, and the insertion of clause 26 together, as evidence of the *animus* of the parties. I think that clause would cover such an agreement, but it is enough for the petitioners if it is doubtful.

A. G. Rickards: With regard to the non-incorporation of Part III. of the Railways Clauses Act, 1863, particularly complained of by petitioners (3), that part of the general Act applies to agreements made between two railway companies, not between a railway company and its customers.

The CHAIRMAN: I think we cannot distinguish this case from the East and West India docks case, decided on the 13th of March, and we must *Allow* the *locus standi* of the petitioners as far as the agreement clause (26) is concerned.

Agent for Petitioners (2), *Bell*.

Agents for Petitioners (3), *Wyatt & Co.*

Agents for Bill, *Dyson & Co.*

MIDLAND RAILWAY BILL.

Petition of (1) THE COMPANY OF PROPRIETORS OF THE STROUD WATER NAVIGATION; (2) CONSERVATORS OF THE RIVER THAMES; (3) SEVERN COMMISSIONERS; (4) STAFFORDSHIRE AND WORCESTERSHIRE CANAL NAVIGATION COMPANY.

27th March, 1882.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE-PALMER, M.P.; Mr. PARKER, M.P.; Mr. MELDON, M.P.; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Railway Company—Portion of Canal Scheduled by—Canal Companies—Conservators of River—Navigation Commissioners—Links in Chain of Water Communication—Feeders of Traffic—Obstruction of Canal—Injury to Navigation—Loss of Traffic and Tolls—Petitioners as Toll Takers—Carriers and Freighters—Creditors and Mortgagees of Tolls—Injurious Affecting—Apprehended Combination between Railway and Canal Companies—Regulation of Railways Act, 1873—Competition.

A railway bill authorised the construction of a railway, so as to terminate upon the towing-path of the Thames and Severn canal, and the books of reference comprised land upon the opposite side of the canal also, the limits of deviation including the canal itself. The petitioners, who claimed to be heard against this interference with the canal

were (1 and 4) the proprietors of canals communicating with the Thames and Severn canal, and (2 and 3) the conservators and navigation commissioners of the Thames and Severn respectively. The canals and rivers represented by the petitioners formed links in a chain of water communication, of which the Thames and Severn canal was also a portion, as well as a feeder of traffic to the petitioners. In all cases the petitioners were toll-takers upon traffic passing over their waters, although not themselves carriers and freighters. They complained that the bill would give the promoters the control of the portion of canal scheduled, if not the power to close it altogether, and that the traffic hitherto derived from it would in consequence suffer, and with it their tolls and revenue. They also directed the attention of the Court to the fact that the promoters would be able to form a combination with the Thames and Severn canal company to the detriment of their interests, and contrary to the general policy of Parliament, while the Regulation of Railways Act, 1873 (making such agreements subject to the revision of the railway commissioners), was not incorporated with the bill. Petitioners (4) also complained of the injury done to them both as mortgagors of their own tolls, and as mortgagees of the tolls of the Severn commissioners, inasmuch as such securities would be injuriously affected by the loss of traffic which would result from the bill. In the case of petitioners (1) a general *locus standi* was claimed on the ground of competition, but not sustained:

Held, however, that all the petitioners were entitled to be heard against so much of the bill as authorised interference with the Thames and Severn canal.

The *locus standi* of (1) the company of proprietors of the Stroud navigation was objected to, because (1) the bill contains no powers over any of their lands, works, canal, or property; (2) the wharves referred to in their petition are not their property, nor have they any such right or interest in them as entitles them to be heard in respect thereof; (3) the petition does not disclose any interference with traffic either

directly or indirectly, or by way of competition or otherwise; (4) the bill does not empower the promoters to put an end to or obstruct the water communication referred to in the petition, or give them any control over the Thames and Severn canal, and the traffic carried or the tolls levied thereon; (5) the Thames and Severn canal is not the property of the petitioners, nor have they any interest therein; (6) the petition does not disclose any competition entitling the petitioners to a *locus standi*; (7) the bill at the most improves existing, but does not create new competition; (8) the petition discloses no ground entitling the petitioners to be heard.

The *locus standi* of (2) the Conservators of the river Thames was objected to, because (1) the substantial complaint of the petitioners is that made in paragraph 13 of the petition that the contemplated Stroud branch deviation would interrupt the course of the Thames and Severn canal, and consequently destroy the water communication therein referred to, but the bill does not empower the promoters to interrupt the said canal, or to interfere with the traffic thereon, and even if it did, that canal is not the property of the petitioners, nor have they any interest in it entitling them to be heard; (2) the apprehended loss of tolls to the petitioners (which the promoters deny will result from the bill) is not such as to entitle the petitioners to be heard; (3) the petition discloses no ground for a hearing according to practice.

The *locus standi* of (3) the Severn commissioners was objected to, because (1) no lands, &c., of theirs are taken; (2) the bill does not empower the stopping up or rendering useless for navigation of the Thames or Severn canal; (3) the said canal does not belong to the petitioners, and they have no rights or interest therein; (4) neither the powers and authorities of the petitioners, whether conferred by Parliament or not, nor their interest in inland navigation, whether connected with the said canal or not, nor their financial arrangements as to, or interests in, the receipts from traffic arising on the said canal, entitle the petitioners to be heard; (6) the petition discloses no ground for a hearing according to practice.

The *locus standi* of (4) the Staffordshire and Worcestershire canal navigation company was objected to on similar grounds, and also because the bill did not contain any provision whereby the right to navigate the Thames and Severn canal, and to use the wharves thereon, alleged in the petition, was, or might be interfered with.

Balfour Browne (for petitioners (1)): The bill,

so far as it affects the Stroud water navigation, proposes to make a railway called the Stroud branch deviation, which terminates on the towing-path of the Thames and Severn canal. The Thames and Severn canal makes a junction with our canal, and the towing-path of the former is encroached upon by the promoters near its point of junction with our canal, although the bill does not take powers over our canal itself. The powers of deviation of the bill extend to and include, not only the towing-path, but the Thames and Severn canal. A considerable traffic passes over our canal to and from the Thames and Severn canal, and both are links in a long chain of water communication. The powers of the bill would enable the promoters to obstruct, if not altogether to close, the canal, as well as the towing-path.

The CHAIRMAN: Do the plans show that the communication between the two canals might be obstructed or put an end to?

Browne: The limits of deviation cross the canal and take land on both sides, and therefore that portion of the Thames and Severn canal will pass into the hands of the promoters. Moreover, the bill contains a clause empowering the promoters to stop up highways over all lands acquired under the bill.

The CHAIRMAN: Do the Thames and Severn navigation company petition against the bill?

Browne: No; because they have themselves a bill before Parliament this session for the abandonment of their canal, but should that bill be thrown out, the Midland company would still have the powers of obstruction given by this bill over the canal. Such a power is contrary to all the principles of modern legislation with reference to railway and canal undertakings. The lands scheduled under the bill include, besides the towing-path, wharves at present used for the purposes of the traffic between the two canals, and the bill must therefore involve loss of traffic, and consequently loss to us. The case of the *Great Western Railway Bill* (2 Clifford & Rickards, 101), is in point. With regard to the tolls, we take tolls for allowing carriers and freighters to pass over our canal, so that their loss is ours, and we are as much affected as if we were ourselves carriers and freighters. By scheduling this part of the canal, the Midland company will acquire the control of the tolls over that portion, which tolls they may make of a prohibitory character, or they may, under the clause for stopping up highways, go further and close the canal at that point altogether, although, as far as navigation is concerned, stopping up the towing-path would be sufficient to do the injury. The special powers of the bill would override

the jurisdiction of the railway commissioners to revise agreements between railway and canal companies under the Regulation of Railways Act, 1873. There are a number of cases in which the question of interference with a canal arose, and in which petitioners in a similar position were heard, and it is to be borne in mind that though we are not carriers we have the power to become so. (*Caledonian Railway and Forth, &c., Navigation Companies Bill*, 1 Clifford & Stephens, 90; *Bradford Canal Bill*, 2 Clifford & Stephens, 178; *Hereford and Gloucester Canal, on the Petition of the Severn Commissioners and Proprietors of the Staffordshire, &c., Canal Navigation*, *Ib.* 29; *Caledonian and Glasgow, &c., Railway Companies Bill*, *Ib.* 35; *Wilts and Berks Canal Bill, on the Petition of the Great Western Railway Company*, 1 Clifford & Rickards, 280.) On the question of competition we claim a general *locus standi*. The railway to be constructed under the bill will run for a long distance parallel to our canal: and, with existing railways of the Midland company, would enable that company to carry on an unfair competition for heavy traffic with us, greatly increased by the fact that the Midland company will be able to charge prohibitory tolls on the portion of the canal scheduled by them, and so to drive the traffic off the canals on to their own railways.

A. G. Rickards (for petitioners (2)) : The position of the petitioners is much the same as that of the proprietors of Stroud navigation, and the same arguments apply. All the traffic that passes down the Thames and Severn canal into the Thames has to pay tolls at the locks to the conservators. The promoters do not interfere with the Thames, which is vested in the Conservators, but they will be able to affect the traffic, and consequently the tolls, to our pecuniary loss, and that indirect injury is sufficient to entitle us to be heard. (*Greenock Harbour Bill*, 2 Clifford & Rickards, 245.)

Pembroke Stephens, Q.C. (for petitioners (3)) : We, like the Thames Conservators, are a public body created by statute, and are charged with the maintenance and control of the river Severn, and are authorised to levy tolls for those purposes. Our petition raises the question of injury to the traders, who are extensive owners of steam-tugs and other boats navigating the Severn and the canals connected with it, including the Thames and Severn canal proposed to be dealt with in manner already explained. The bill will injure the security, in the shape of rates upon traffic, which we have given for the large sums of money borrowed under the statutory powers with which we are invested by our Acts for the improvement of the Severn navigation.

Cresswell (for petitioners (4)) : The Staffordshire and Worcestershire canal navigation company carry a large traffic brought from the districts served by the Thames and Severn canal, and the bill inflicts a double injury upon us, as we are the sole mortgagees of all the tolls of the Severn navigation, and we shall be injured (a) by the loss of traffic upon our own canal and the consequent diminution of tolls, which form the security given by us for the monies we have borrowed and raised to make advances to the Severn commissioners, and (b) by the loss of traffic upon the river Severn, and the consequent diminution of the tolls receivable by the Severn commissioners, which last-mentioned tolls are our security for the moneys owing to us from those commissioners. In the case of the *Herefordshire and Gloucestershire Canal Bill* (2 Clifford & Stephens, 29), we were allowed a *locus standi* on the ground that we were mortgagees of the tolls of the Severn, and also that, although we were 45 miles away, we were a canal taking traffic from the Severn, of which that canal was a feeder.

Bidder, Q.C. (for promoters) : Speaking generally of all the petitioners against the bill, there is no power to close the Thames and Severn canal contained in the bill, and the clause for stopping up highways on lands, taken under the compulsory powers of the bill, is not intended to and would not cover a power to close the waterway. We may become proprietors of the *solum* of the canal, but we could not close it. In the cases which have been cited powers were taken to close the canal, and in most of those the petitioners were freighters, and not, as here, toll takers.

The CHAIRMAN : It is a question of their being injuriously affected in their pecuniary interests. It does not matter whether they are freighters or toll takers.

Bidder : As to the power of revision of agreement between railway and canal companies by the railway commissioners under the Regulation of Railways Act, 1873, referred to in argument on behalf of the petitioners, there is nothing in the bill which proposes such an agreement between the companies, nor, if there was, is there anything in the bill to repeal such a provision of that general Act. The Thames and Severn canal company are themselves promoting a bill to convert their canal into a railway (in which event we should be able by the powers conferred by this bill to make a junction with that railway at the point of the canal in question here), and that is the bill (if any) which the petitioners have a right to oppose. We took precisely similar powers as regards the canal in an Act of 1880, although

not carried them out. [*Counsel for others dissented.*]

RICKARDS: At any rate the powers conferred are new powers, and the petitioners have a right to be heard against them.

MR. HINDE-PALMER: The interests of all the petitioners are more or less remote, and do not entitle them to be heard. In the case of the *London and Western (Redditch and Leeds) Bill* (21 & Rickards, 120), the *locus standi* of petitioning navigation companies was discussed. As to competition with the Stroud water canal that is of too remote a character to entitle them to be heard on that point.

I am willing to concede a *locus standi* to the petitioners for the purpose of obtaining a hearing for keeping the navigation of the canal open.

MR. RICKARDS: That offer is inconsistent with the provisions of the bill, which would still give to the company power to acquire the bed and banks of the canal, and to make the alterations.

CHAIRMAN: We allow the *locus standi* of the Petitioners limited to the question of the extension of this bit of railway which crosses the canal, that is to say, against clause 4, section 2, and clause 16, and so much of the preamble as relates thereto.

MR. HINDE-PALMER: For Petitioners (1), *Maples, Teesdale*

MR. RICKARDS: For Petitioners (2), *Wyatt & Co.*

MR. HINDE-PALMER: For Petitioners (3 and 4), *Norton.*

MR. RICKARDS: For Bill, *Sherwood & Co.*

PIER AND HARBOUR PROVISIONAL ORDER CONFIRMATION (NO. 1) (BROADSTAIRS ORDER) BILL.

IN FAVOR OF FREEHOLDERS, RATEPAYERS, AND INHABITANTS, &C., OF BROADSTAIRS.

May, 1882.—(Before Mr. HINDE-PALMER, Chairman; Mr. PARKER, M.P.; Sir JOHN WORTH; Sir F. S. REILLY; and Mr. AM-CARTER.)

Construction of Second—Ratepayers, Inhabitants, &c., opposing, besides Owner of Pier—Harbour Commission Promoting Local Board Neutral—Representation—upon Rates—Imposition of Tolls for Pier—Tolls not Compulsory—Interests affecting place—Inhabitants and Visitors, affected.

The bill confirmed a Provisional Order for the construction of a pier at Broadstairs, and the signatories to the petition were ratepayers and inhabitants of that place, and in some instances members of the harbour commission board, which promoted the Order, and in others members of the local board, which did not oppose the Order. Another pier was authorised and in course of construction at Broadstairs, and the owner of this pier petitioned, his *locus standi* not being objected to. The petitioners claimed to be heard in addition (1) as ratepayers, upon whom fresh burdens would be thrown by the expenditure incurred in the construction of the proposed pier; (2) as inhabitants upon whom a new rate would be levied in the shape of tolls for the use of the pier authorised by the bill, and, generally, as being interested in the prosperity of Broadstairs, which they alleged would be injured by the addition of an unnecessary pier for the use of which the said tolls would be charged:

Held, however, that such of the petitioners as signed as members of the harbour commission and local board were represented by those bodies, as were also the ratepayers by the former board; that the tolls to be levied, being of a voluntary character, did not entitle them to be heard; and that they had no such interest in the alleged injury to Broadstairs as entitled them to be heard.

[Mr. Pemberton, M.P., who had previously occupied the chair, withdrew upon this case coming on for argument, as his constituents were locally interested in the bill.]

The *locus standi* of the petitioners was objected to, because (1 and 2) there is nothing in the bill or order affecting the petitioners, or their lands, houses, or property; (3) the petitioners allege that new rates are to be levied and burdens thrown upon the inhabitants and others, but the bill contains no such powers; (4) some of the petitioners sign the petition as harbour commissioners, but in that capacity they cannot (even if they were otherwise entitled) be heard against the common seal of the harbour commissioners, who are the promoters of the order; (5) other petitioners sign as members of the Broadstairs and St. Peter's local board, but are

not entitled to petition in that capacity except under the seal of their local board, and the local Board does not oppose; (6) the petitioners have no claim to be heard according to practice.

Ridley (for petitioners): The petitioners, besides being ratepayers, &c., include members of the Broadstairs and St. Peter's local board, and commissioners of the harbour of Broadstairs. A pier, in the same locality and close to the pier proposed to be erected under the bill, is in process of construction by private persons, having been authorised by Provisional Order two years ago, and therefore the proposed pier is quite unnecessary. The bill gives power to the harbour authority of Broadstairs to mortgage the harbour dues to build the proposed pier, and when completed to levy dues upon the inhabitants of Broadstairs and other persons using the pier.

Sir F. S. REILLY: Do the commissioners in their corporate capacity promote the Order?

Ridley: Yes. The construction of the harbour will throw great burdens upon the ratepayers, and we submit that the commissioners should not be allowed to incur this useless expenditure. We claim to be heard upon the grounds, first, of the burden thrown upon the rates by the construction of the proposed pier; and, secondly, because the bill authorises the commissioners to levy a toll upon us for the use of the pier, as well as upon visitors to Broadstairs, and that will affect the prosperity of Broadstairs.

Bazulgette (for promoters): The proposed pier will be a promenade and place of pleasure resort only, and the rate imposed for its use will only fall on those who voluntarily use it, and is not in any sense a compulsory rate. (*Sutton Gas Bill*, 1 Clifford & Rickards, 267.) The promoter of the rival pier already authorised has petitioned against this Provisional Order, and his *locus standi* is not objected to. The Order is promoted by the harbour commissioners under their common seal, and, therefore, those commissioners who join in the petition are represented by the promoters. The same argument applies to petitioners, who are members of the local board, who are not opposing the bill. The petitioners have no interest other than the general public, nor have the residents of Broadstairs any more interest than visitors, as the rate to be charged at the pier is equally voluntary in all cases.

The CHAIRMAN: The Court are of opinion that the petitioners have not made out a sufficient ground for a *locus standi*.

Agents for Bill, *Wyatt & Co.*

Agent for Petitioners, *Greenhill.*

PIERS AND HARBOURS PROVISIONAL ORDERS (HOLYWOOD) BILL.

Petition of BELFAST HARBOUR COMMISSIONERS.

23rd May, 1882.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE-PALMER, M.P.; Sir JOHN DUCKWORTH; Sir FRANCIS S. REILLY; and Mr. BONHAM-CARTER.)

Provisional Order — Pier — Tolls — Revival of Lapsed Powers — Harbour Limits — As distinguished from Rating area — Exemption from Harbour Rates — Suggested Evasion of Competition — Limited Company — Dissolution of — Transfer of property — Without statutory rights — Board of Trade — Provisional Orders by, how framed.

A Provisional Order, passed in 1864, authorised the construction, by a limited company, of a pier of considerable length at H. within the harbour limits of the Belfast commissioners, but beyond their rating area. Only a portion of the pier was constructed, the powers for the purpose expiring in 1869; the company were wound up and dissolved, and their lands, with the pier upon them, ultimately passed into the hands of the chairman and secretary of a railway company, which obtained power in the session of 1881 to make a branch to H., not nearer, however, than a mile to the sea shore. These two gentlemen now promoted an order enabling them to repair and maintain the authorised pier and works "so far as the same had been already constructed," and, further, with the consent of the Board of Trade, from time to time to "construct and maintain additional quays, landing places, wharves and jetties in connection with the existing pier and quay," and to take tolls, &c. The Belfast harbour commissioners (who had not opposed the original Order of 1864) petitioned on the ground of apprehended injury from competition, alleging that the revival of powers as to the pier, in connection with the new railway project, pointed to an intention of landing goods free from harbour dues at H., and then bringing them to Belfast and the interior by railway. The promoters rejoined that

for purposes of *locus standi* the pier and railway schemes were altogether distinct, that the pier of 1864 had been authorised, and was now the property of the promoters, and that the exemption from rates had existed under the Order of 1864:

Held, however, that the Order practically conferred upon the promoters the lapsed powers, or some of them, of the Order of 1864, with new and additional powers, and that in the circumstances of the case there was sufficient to entitle the petitioners to be heard generally on the ground of competition.

(*Per Cur.*) "The Court always try to avoid giving a decision that would shut out parties from raising a legal question."

The *locus standi* of the petitioners was objected to, because no lands of theirs were taken, and the competition apprehended could not arise. The pier to which the Order related was an existing work authorised in 1864, and the promoters were only seeking power to maintain it instead of the promoters of the original Order. Being situate in a district exempted from rates leviable by the petitioners, they would not thereby be placed in any worse position, and generally there was no sufficient ground or interest entitling them to be heard.

Pembroke Stephens, Q.C. (for petitioners): This is a proposal virtually to authorise, within the harbour limits of Belfast, a rival authority and pier, to compete with the harbour commissioners of Belfast, and to abstract traffic from the town of Belfast, for whose interests the harbour trust exists and was established. To appreciate the real effect of the Order it must be borne in mind that Belfast stands at the bottom of a deep bay, across the shores of which two imaginary lines are drawn, one from Carrickfergus to Grey Point, marking the outer or harbour limits, and the other from White House to Kinnegar, defining the inner limits, within which the commissioners have power to levy rates. The Holywood pier, the subject of the present Order, lies between the inner and the outer limits, and the petitioners are engaged in carrying out works and improving the channel seaward beyond this pier, towards the boundary of the outer limits. The history is shortly that in the year 1864, a pier of a certain length was authorised by a Provisional Order in the hands of a limited company, which company is not only dead, but has been wound up

without any power of transferring its undertaking or statutory powers. It had however bought two acres of land, which was sold by the liquidators, and passed into the hands of two gentlemen, the promoters of the present Order, who happen to be the chairman and secretary of the Belfast central railway company. With the aid of certain powers recently obtained by that company for an additional line to Holywood, they hope to utilise this pier no longer for purely local, but for Belfast traffic, landing the goods just outside the rating limits of the harbour commission, and thence taking them on by railway to Belfast and the interior of the country. We object to this as direct and injurious competition. As a mere local speculation the pier and quay of Holywood were from the first a failure. There is no trade or business at Holywood to justify the expenditure, original or proposed. This is a new proposition, and a new business, but for the sake of strengthening their position, the promoters choose to assume that they have inherited the powers of the old company. Under the terms of this Order they would have power not only to construct and maintain the authorized works, but at any time or times hereafter, with the consent of the Board of Trade (who decline to entertain questions arising out of competition or out of opposition between local interests), to increase their quays and works to any extent without public authority from Parliament. Thus, for the private interests of the undertakers, or in other words of the Belfast central railway company, a rival port and harbour would be created which must seriously injure the port and harbour of Belfast. We further contend that if the Order be confirmed, the promoters, while thus actively competing with Belfast, will be able to avail themselves of portions of the works already executed or in process of execution by the harbour board without contributing adequately to the expense. The reason for giving the commissioners power to levy rates up to the inner limit, while they are restricted from charging in the outer limit, was because it was supposed that articles of merchandise landed in the one case would be intended for consumption in Belfast, whilst as to articles landed between the inner and the outer limits, they would be merely for the consumption of persons in the locality itself who ought not to be called upon to pay rates for the benefit of Belfast. It will be taking undue advantage of that exemption if goods are henceforth to be landed at this pier and taken by railway into Belfast. The original Order was for a pier on iron piles 1,253 yards in length; and under the general Act, five years was the limit of time for the construction of the works. Not

having been completed within that period, the powers lapsed. Between the Holywood pier company of 1864, and Messrs. Young and Ray, who appear upon the scene 18 years later, there can be no privity whatever. It was simply the Holywood pier company, limited, and not that company and their assigns, who were constituted the "undertakers." But supposing this were a proposal by the Holywood company themselves to revive their lapsed powers, that would be, for purposes of *locus standi*, an application for new powers. (*Burnham Tidal Harbour Bill*, 1 Clifford & Rickards, 205.) There is no suggestion that these two gentlemen as purchasers of the pieces of land are clothed with any statutory power, though they have put the Order into the shape that best suits their present proposals.

The CHAIRMAN: They refer to the previous legislation to show that the pier or landing place was thought desirable at that time.

Stephens: The powers they take in the Order go further than that, and say: "Subject and according to the provisions of this Order, the undertakers may repair and maintain the existing pier, quay, and works authorised by 'The Holywood Pier and Quay Order, 1864,' so far as the same are already constructed." . . . "Subject, and according to the provisions of this Order, the undertakers may from time construct and maintain additional quays, landing places, wharves, and jetties, in connection with the existing pier and quay, but such works shall not be commenced without the consent of the Board of Trade having been first obtained in writing, and having been commenced, shall not be constructed or altered otherwise than with the approval of the Board of Trade in writing." That is to say, these two gentlemen, having found certain works in a ruinous condition, propose to put them into a condition of efficiency, and to construct any additional works of any size which they can induce the Board of Trade to approve of.

Sir F. S. REILLY: Do you say that under the Order there would be power for them to dredge the channel and make a deep water harbour?

Stephens: Yes, they propose to take powers to construct additional wharves and jetties, and they must do something to provide a foundation for those works. They may repair and maintain the existing pier and quay and works authorised by the Order of 1864, and when we go back to the Order of 1864, we find these general words: "convenient landing places, wharves, jetties, cranes, weighing machines, and works, and conveniences," connected therewith.

The CHAIRMAN: Had the company under the Order of 1864 power to levy rates?

Stephens: Yes; but we say that the fact of the pier being in connection with the railway puts this rating power on an entirely different footing from what it would be if the railway were not there.

The CHAIRMAN: When was the railway made at Holywood?

Stephens: There was a railway at Holywood before 1864, but there was then no connection between the railway company and the pier. Now a second line of railway to Holywood has been authorised, and pressure can be applied by its promoters, who are the undertakers of this Order.

O'Hara (for promoters): That is a question of merits which this Court will not entertain.

Stephens: We object to the proposal on every ground. It would be competition with us if they placed this pier immediately outside our harbour limits; but here it will be actually inside our harbour limits, and therefore more objectionable still. Besides the case of the *Burnham Tidal Harbour Bill*, that of the *Caledonian Railway (Gourock Branch and Quays) Bill* (2 Clifford & Rickards, 76) is on all fours with the present.

The CHAIRMAN: Do the harbour commissioners take landing dues as distinguished from harbour dues?

Stephens: Yes; within the rating district.

The CHAIRMAN: If this Provisional Order were passed, both this pier and the harbour commissioners would be levying quayage dues?

Stephens: They would.

O'Hara (in reply): Putting aside the question whether Messrs. Young and Ray are the Belfast central railway company or not, which has nothing to do with this argument on *locus standi*, the Provisional Order only says that the undertakers may repair and maintain the existing pier, quay, and works authorised by the Holywood Pier and Quay Order, "so far as the same are already constructed." The pier which the original Order gave power to construct was 1,253 yards long, terminating at the navigable channel, but the pier now in existence is about a fourth of that originally sanctioned; and it is only in relation to what has actually been constructed that these powers are now taken. Messrs. Young and Ray bought the land upon which the pier is built. That pier is as much theirs as any man's freehold, and they could say to anyone wanting to land goods upon it, "We will not let you come alongside and land your goods until you pay us a shilling," just as a man owning a private road might demand payment for an easement over it. The only power we want is that of taking tolls; in other respects, the Order is a mere re-enactment of

visions contained in the Order of 1864 for new works are proposed to be carried out.

CHAIRMAN: Would not the words of this Provisional Order enable you to carry out the works further?

A: Nothing of the sort. As far as any powers under the Order of 1864 are unspent, they may be exercised by the persons acquiring the land to do so under this Order, but no power to extend the pier beyond the point at which it was opened could be made under this Order.

REILLY: Admitting that to be so, do you think that the statutory powers of the company have been transferred?

A: All that could be transferred, has been transferred. I am aware that you cannot create statutory rights where no power exists for creating them, and that you must do so by Parliamentary authority; but putting that aside, it requires Parliamentary authority, though the property has been transferred. Suppose the Provisional Order were for a sale or lease of the original promoters to other parties, the petitioners could not be heard. It is said that we might, by extending the pier and opening out additional works, create a new petition. Even if this were a new petition—which I deny—the petitioners would not be entitled to be heard. In the *Hull and Lincolnshire Dock and Railway* case (*supra*, p. 169) you disallowed the petition of the Hull docks company though it was a new one; it being to make a new dock. The case of the *Haven Dock and Railway* (3 Clifford & Rickards, 89) is on all fours with this case. As to objections connected with railways, the petitioners complain of would not arise from the existing Belfast and Holywood railway, but of another railway that may be made, and which, if made, would be in the mountains, on high ground, and away from the shore.

CHAIRMAN: Have any tolls been taken at the pier?

A: Yes; tolls were taken regularly till the company got into difficulties. Since the death of the company a Mr. Preston became manager and took the tolls.

CHAIRMAN: He could not do so legally.

A: He could not enforce his right in a legal way, but he prevented people from passing without paying. This is simply a power to defend and maintain an existing pier.

REILLY: I do not think you have explained how it is that the Provisional Order does not legally, and in terms, propose to transfer any statutory power which the original company may have possessed?

O'Hara: Because whatever statutory power was passed, was sold in the first instance to Mr. Preston, and from him again to the promoters. The Board of Trade will not go into questions of title; they simply say—"We are not going to give you a statutory conveyance, but if you buy the land, and there is no opposition, we will, by Provisional Order, transfer the powers of 1864 to you."

Sir F. REILLY: This is not merely a transfer of powers originally given—new powers are given by this Provisional Order.

O'Hara: Not new powers, but powers given to new people.

Sir F. REILLY: The powers start afresh from this Order.

O'Hara: That may be so; but I can conceive of no case in which there would be less new competition than in the present.

The CHAIRMAN: We always try to avoid giving a decision that would shut out parties from raising a legal question. I think if we were to refuse the *locus standi* in this case we should be deciding that some of the powers given by the Order of 1864, so far as any of them are saved by this Act, were still in existence. I should not like to decide that they were in existence. The Court are all of that view.

O'Hara: Then supposing we were in the year 1864, and were coming *de novo* for power to make this pier, I contend that the competition with the Belfast harbour commissioners would not be of such a character as to entitle them to be heard. It is plain that goods going to the town of Belfast would never be transhipped at Holywood and then taken on by railway to Belfast. Putting the legal aspect of the case out of the question, you would not, I submit, have granted these people a *locus standi*. A very similar case was decided in 1874, the *Fareham Railway Bill, Petition of the Southampton Harbour and Pier Board and the Corporation of Southampton* (1 Clifford & Rickards, 68).

The CHAIRMAN: In that case the new railway did not propose to construct a pier?

O'Hara: The railway was going to tap the traffic.

The CHAIRMAN: We think there is a sufficient case on the ground of competition to entitle the petitioners to a general *locus standi*.

Locus standi Allowed.

Agents for Petitioners, *Sherwood & Co.*

Agent for Order, *Rees.*

PLYMOUTH AND DARTMOOR RAILWAY BILL.

Petition of THE GREAT WESTERN RAILWAY COMPANY.

20th April, 1882.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE-PALMER, M.P.; Mr. PARKER, M.P.; Sir JOHN DUCKWORTH; and Sir F. S. REILLY.)

Railway Extension—Existing Railways—Running Powers Over—Right to Lay Third Rail upon, for Broad Gauge Traffic—Competition—Railway Companies as Dock Owners.

The bill proposed the extension of an existing railway, over a portion of which the petitioners had running powers, as well as a right to lay a third rail for broad gauge traffic under an Act of 1875. They claimed to be heard, first, to obtain a clause to confer similar powers upon them with respect to the railways to be constructed under the bill; and, secondly, as owners of docks, against a power contained in the bill for authorising the construction of wharves and piers, which, they maintained, were intended to be used for dock purposes, and would enable the promoters to compete with them. It appeared that (1) even if they had any claim to be heard in respect of their rights over existing railways belonging to the promoters, they had never availed themselves of any such rights or powers; (2) that the works authorised by the bill did not amount to anything in the nature of docks:

Held, that, under these circumstances, the petitioners were not entitled to a *locus standi* against the bill.

The *locus standi* of the petitioners was objected to, because (1) their petition relates mainly to competition, but no such competition can arise under, or result from the bill as to entitle them to a *locus standi*; (2) the proposed railway will not communicate with the railway of the petitioners, or cross under, or over the same, and there are no provisions in the bill for taking or using any part of the lands, railway stations, or accommodations of the petitioners, or for running engines or carriages upon or across the same, or for granting other facilities

against the petitioners; (3) the fact that in the Plymouth and Dartmoor Railway (Plymouth Extension) Act, 1875, provisions were inserted for the protection of the South Devon railway company, whose lands and property were affected by the provisions of that Act, can confer no right upon the petitioners to be heard against the present bill, when, as above stated, their undertaking is in no way affected by the provisions of the bill; (4) the power contained in clause 37 of the bill authorising working and other agreements between the promoters and the companies therein named (including the petitioners) is merely a permissive one, and is the power usually granted by Parliament for entering into working and traffic agreements, and it is not the fact, as alleged in the petition, that it would enable the promoters practically to transfer their undertaking to the London and South-Western railway company, and even if it did, the petitioners would have no right to be heard against it; (5) the petition discloses no such interest in the objects and provisions of the bill as to support a claim to a *locus standi*.

Saunders, Q.C. (for petitioners): By the bill it is proposed to authorise the Plymouth and Dartmoor company to make certain lines of railway on either side of the Cattewater at Plymouth, and certain quays, embankments, piers, and works. The promoters are a company of long standing, who, in 1875, got an Act giving them authority to construct certain lines on the narrow gauge, called the Plymouth extensions, round the Cattewater, under which Act we, the Great Western company, got running powers over that railway, and also got power to call upon the Plymouth and Dartmoor company to lay down a third broad gauge rail at our own expense. That railway is now made and opened. The petitioners in another bill now before Parliament take power to lease that railway to the London and South-Western railway company. We are the owners of the South Devon railway from Exeter to Plymouth, and of the Sutton branch railway from the South Devon railway to Sutton harbour, and we are the owners of the Great Western docks at Plymouth, on which we have expended a large amount of capital. Having that interest in the Great Western docks and in the Sutton harbour, we submit that we are entitled to be heard against a scheme which is practically for the purpose of constructing docks, or something in the nature of docks, that is to say, landing-places, wharves, and quays in competition with our docks. The Thames deep water company were on like grounds allowed a *locus standi* against the London, Tilbury and Southend Railway Bill

). If the promoters get this could be able to carry more or ly traffic in competition with us. e heard on the ground of com- also to obtain the insertion of nting us the same running powers hts over the proposed railways less over the promoters' railways 875.

promoters): Although the line as passed in 1875, and the Great any have had the right of running aying down a broad gauge rail have never sent a single ton of line. It is simply used for the one and manure, and is in fact a row gauge tramways to and from that is all that the railways pro- the bill will be. The fact that ning powers over an existing line he promoters a right to be heard onstruction of a new line. The e promoters have another bill ment for leasing their under- be London and South-Western the petitioners no rights against th regard to the so-called dock the bill does not authorise the of any dock, but merely small s, which would not enable us to y competition with the Great any.

AN: We think the petitioners are a *locus standi*.

ill, Ball.

Petitioners, Mains.

AND MARGATE TRAMWAYS BILL.

HE RAMSGATE IMPROVEMENT COM-

1882.—(Before Mr. PEMBERTON, rman; Mr. HINDE-PALMER, M.P.; e, M.P.; and Mr. RICKARDS.)

*Widening of authorised Gauge—
with Roads—Extension of Time
ction—How far a Question to be
Petitioners—Partial Abandonment
sed Tramways—Deposit Money—
ut, in part—Guarantee for Pay-
osts under previous Acts—Security
-Legal Rights of Petitioners as Credi-
provement Commissioners—Street*

The bill proposed, *inter alia*, an increase in the width of gauge of certain authorised tramways, an extension of time for their construction, and, as to a certain portion of the tramways (which was to be abandoned) a payment out of the deposit money. The petitioners were improvement commissioners, and the street authority of one of the towns between which the tramways were to be constructed. They claimed to be heard, (1) as to the widening of the gauge, as involving additional interference with the roadway; (2) as to the extension of time for completion, on the ground that the time fixed by the promoters' former Acts for completion had been a matter of agreement between themselves and the promoters; (3) as to the partial payment out of the deposit fund, that a former Act of the promoters had guaranteed them their costs of opposition to the scheme; that the release of any portion of the deposit fund weakened what was, in certain events, their ultimate security for the payment of those costs, and that the bill therefore affected their rights as creditors of the promoters:

Held (apparently on grounds (1) and (3)) that the petitioners were entitled to a general *locus standi* against the bill.

The *locus standi* of the petitioners was objected to, because (1) the bill does not contain any powers for extending the time for the compulsory purchase and taking of any land or property of the petitioners, nor will any rights, powers, or privileges of the petitioners be affected; (2) the promoters are under no agreement or obligation with the petitioners to construct the tramways and works authorised by the Ramsgate and Margate Tramways Acts, 1879 and 1880 (hereinafter referred to as "the former Acts") within the period thereby limited for that purpose, and the petitioners are not, according to practice, entitled to oppose an application to Parliament for an extension of time for construction of authorised works; (3) as regards the proposed widening of the gauge authorised by the former Acts from 2 ft. 6½ in. to 3 ft. 6 in., the petitioners cannot be injuriously affected thereby. The allegations of the petitioners on this point are incorrect, and the promoters are required to widen the roads to 35 ft. or 40 ft. before laying their rails, and they are not seeking to alter the limitations fixed by Par-

liament as to the width and dimensions of the cars; (4) the petitioners do not oppose as frontagers, nor do they represent them; (5) the promoters are not seeking to alter any of the provisions inserted in former Acts for the protection of the petitioners, and the bill does not alter any of the legal remedies which the petitioners possess for obtaining payment of the costs and expenses referred to in paragraph 9 of the petition; (6) the petitioners have no lien or charge upon the deposit fund paid into Court upon the application for the former Acts for securing the payment of their costs and expenses before referred to, and have no right to object to the repayment of a part of such fund to the promoters in respect of the proposed abandonment of a portion of their undertaking situate in the district of another authority as sought by the bill; (7) neither the petitioners nor the inhabitants of their district are injuriously affected by the bill, nor any of their rights, privileges, or interests injuriously affected by it, and they have no such interest in it as to entitle them to be heard against it.

Cooper, Parliamentary agent (for petitioners): The bill proposes to authorise new tramways; to abandon others, and release the deposit money in respect of the abandoned portion; the raising of further capital, an extension of time, an alteration of gauge, and other objects. The matters to which the petitioners, as the authority having the control of the streets, principally object, are the alteration of the gauge of the tramways, the extension of time for completing the tramways, and the release of deposit as to certain portions of the tramways. By the Ramsgate and Margate Tramways Act, 1879, sec. 44, it was enacted that the tramways by that Act authorised should be constructed on a gauge of 2 ft. 6½ in. By the present bill it is proposed to increase the width of the gauge to 3 ft. 6 in., and there is no limitation of the width of the car which may be used. The petitioners strongly object to this increase as dangerous and inconvenient to the traffic of the streets, to the inhabitants, frontagers, and the public generally. We also protest against any extension of time for the construction of the tramways, as a matter involving the public convenience. Then there are certain costs, which the promoters agreed to pay us, and we complain that they are now seeking to release their deposit in part.

Mr. RICKARDS: You have your legal remedy to recover those costs.

Cooper: But our legal remedy would be weakened, because when we begin to take advantage of it, we shall not have this deposit to look to. As to our right to be heard against

the proposed extension of time, a deliberate agreement between ourselves and the promoters was entered into before they obtained their Act of 1880; clauses were inserted in the bill at our instance, and the time for the completion of works, as inserted in that Act, was a matter which we took into consideration, and upon which we fixed the terms of our consent to the bill. The decisions in the *North Metropolitan Tramways Bill* (1 Clifford & Rickards, 111), and the *St. Helen's and District Tramways Bill* (3 Clifford & Rickards, 94), though apparently adverse, are capable of explanation on account of the difference of circumstances.

Macrae (for promoters): As to the alteration of gauge, the width of the tramcars is not altered by the bill.

Mr. RICKARDS: Is not the road authority entitled to object to the rails occupying a greater part of the road than was before proposed to be occupied. All persons must get out of the way of a tramcar, and ordinary travellers on the road will have less space now available for locomotion.

The CHAIRMAN: If the local authority were entitled to be heard in the first instance, does not it follow that they must be heard when you alter the way in which you are going to use their ground?

Macrae: There can be no substantial injury created by the use of a broader gauge. It is not like the case of a railway. The public still have the use of the road except just at the time when a tramcar is passing. As to the extension of time, this case is substantially the same as those cited on behalf of the petitioners. As to the objection to the bill in respect of the release of the deposit money, that is not a substantial grievance. If they sued us for costs under the provisions of our Acts, they could not get execution against the deposit, because the deposit is not the property of the promoters of the bill, liable to their debts, but is deposited for a special purpose, namely, for the landowners, who have a prior charge upon it.

Mr. RICKARDS: Suppose there were no landowners, or suppose all the landowners were satisfied, who would then be entitled to come upon the deposit?

Macrae: In case of the company being insolvent or wound-up, it is to be applied for the benefit of the creditors of the company.

Cooper: Supposing the petitioners to be placed in the position of judgment creditors, they would then be entitled to the ordinary garnishee proceedings.

Macrae: The petitioners would have a remote contingent right to go upon the deposit in the event of the company being insolvent. In that

ld be subject to all prior rights of
The petitioners at present have
this fund.

IRMAN: You are asking Parliament to
fund which is liable to their debt
ers.

By the bill the promoters ask to be
release that portion which represents
ned work, with the object of making
o the same or a greater extent in
the new works.

Those are all to be struck out of the
or of the Standing Orders Committee.

The interest of the petitioners is too
give them a *locus standi*.

AIRMAN: The fact of the promoters
h the fund, if the petitioners have
t in it at all, would give them the
heard in respect of it. We think the
in this case are entitled to a
us standi.

or Bill, Durnford & Co.

r Petitioners, Cooper.

RHONDDA AND SWANSEA BAY RAILWAY BILL.

(1) THE GREAT WESTERN AND LLYNVI ORE RAILWAY COMPANIES.

1882.—(Before Mr. HINDE-PALMER,
Chairman; Mr. PARKER, M.P.; Sir
UCKWORTH; Sir F. S. REILLY; and
HAM-CARTER.)

*Companies as Landowners—Junction
l Crossing by Bridge, of Railway—
Interference—Acquisition of Railway
Petitioners' Railway on the Level—
andi, General or Limited.*

will empowered the promoters to make
tion with a railway belonging to the
ners, and to cross their line by a
, the abutments of which would rest
land belonging to the petitioners.
ill also authorised the promoters to
e a portion of railway, which crossed
stitioners' railway on the level, in-
g the actual junctions of the said
y with that of the petitioners. The
ters conceded a limited *locus standi*
petitioners on the question of physical
rence with their lands and property,

but contended that they were not entitled
to be heard generally as landowners:

Held, however, that there was such an inter-
ference with the property of the petitioners
as to entitle them to be heard generally as
landowners.

The *locus standi* of the petitioners was ob-
jected to, because (1) although the Great
Western railway company has a right to be
heard against the bill so far as it relates to the
crossing of their South Wales railway by railway
No. 1, and to the junction of railway, No. 2,
with their South Wales railway, that company
has no right to be heard upon any of the other
questions raised in the petition; (2) the pro-
moters admit the right of the Llynvi and
Ogmore railway company to be heard against
the bill so far as it relates to the crossing of and
interference with their existing railway by
railway No. 1, but the promoters deny the right
of the company to be heard otherwise; (3) the
allegations of the petition with reference to
interference with the proposed railways of the
Llynvi company, even if well founded, which
the promoters deny, do not entitle the petitioners
to be heard against the bill; (4) the alleged
taking of, and interference with the lands, rail-
ways, and accommodations of the petitioners
does not entitle them to be heard against the
bill except as hereinbefore admitted; (5) the
Cwm Avon railway was constructed before the
South Wales railway, and the right of the Great
Western company to carry their traffic across it
is subject to the use of the Cwm Avon railway for
its own proper traffic. The promoters deny the
right of the Great Western and the Llynvi com-
pany to be heard against the acquisition by the
promoters of the Cwm Avon railway, and its
use by them for the purposes of their under-
taking; (6) the Great Western company have
no such interest in the Cwm Avon railway as
entitles them to be heard against the bill, so far
as it relates to the powers proposed to be con-
ferred upon the promoters over that railway;
(7) the fact that the Great Western company
work and manage the railways of the Llynvi
company (if true) does not entitle the Great
Western company to be heard against the bill
with respect to any proposed interference with
those railways; (8) the apprehension of ab-
straction of traffic from Porthcawl to Swansea
(even if well founded, which the promoters
deny) is not such an abstraction as entitles the
Llynvi company to be heard against the bill;
(9) the petition does not allege or show that
(even if the railways proposed to be authorised
by the Great Western railway, No. 2 bill, were

constructed) any such competition between the petitioners, or either of them, and the promoters would be caused by or result from the bill if passed, or by or from the works to be thereby authorised as according to practice entitles the petitioners, or either of them, to be heard against the bill; (10) except as hereinbefore admitted, the bill does not contain any provision affecting the petitioners; (11) the petition does not allege or show that the petitioners, or either of them, have any such interest in the objects and provisions of the bill as entitles them to be heard against it.

[Upon its appearing that the bill took substantial powers over some lands of the Llynvi and Ogmore railway company, the *locus standi* of that company was conceded against the bill on behalf of the promoters.]

Michael, Q.C. (for the Great Western railway company): The Great Western company have, like the Llynvi and Ogmore company, been served with notice as landowners by the promoters, and railway, No. 2, authorized by the bill, is described as terminating by a junction or junctions with the South Wales line of the Great Western railway company. That railway, therefore, will take our land and join on to our main line.

Rodwell, Q.C. (for promoters): The Great Western company are only entitled to be heard, if at all, as workers of the Llynvi railway. They are not landowners in the strict sense of the term, whose property is taken.

Sir F. S. REILLY: If they are not landowners, do you admit that they are lessees or occupiers?

Rodwell: We only cross them by a viaduct. At the utmost they are, according to numerous cases, only entitled to be heard as to our mode of crossing their railway and forming a junction with them.

Michael: We are entitled to a general *locus standi*. They take our land for the purpose of constructing a bridge, as well as interfering with our property at the point of junction. Prior to 1876 a railway company was always given a landowner's general *locus standi* in such cases as the present, but in that year an exception was made by limiting their claim in a certain case. Against the *Burntisland Direct Railway Bill* (1 Clifford & Rickards, 207), however, the petitioning railway company was allowed an unlimited *locus standi*. The promoters also take a portion of the Cwm Avon railway, which crosses our line, and convert it from a private railway into a portion of their system, so that their compulsory powers of taking a portion of the Cwm Avon railway are defined by clause 36 of the bill as "including the junction or junctions of the Cwm Avon railway

with the South Wales line of the Great Western railway company." The promoters, therefore, both interfere with and take our lands.

Rodwell (in reply): We only affect the Great Western railway in this way, that we make a junction with them at Briton Ferry, and cross them by a bridge over their railway, and for the purposes of this bridge, not for the purpose of running trains along the railway, but merely for the abutments of the bridge, we may take a portion of their land. We also take power to utilize the Cwm Avon line, which the Great Western cross on the level. An analogous case to this has been already decided this session—*East and West Yorkshire Union Railway Bill* (*supra*, p. 142). I refer the Court also to the case of the *Metropolitan Railway Bill* (3 Clifford & Rickards, 38). We do not take the land for the purposes of the railway, but we take, as it were, an easement over the petitioners' railway.

Sir F. S. REILLY: The extent of land taken is immaterial. You take their land both for the purposes of the bridge, and also of the junction, and therefore, surely you affect them as landowners. There is, besides, the question of the Cwm Avon railway.

The CHAIRMAN: We think that the mere service of notice upon the petitioners as landowners is not conclusive, but we think a sufficient case has been shown by the Great Western company to entitle them to a general *locus standi* as landowners. As regards the Llynvi and Ogmore company, we understand that their *locus standi* is conceded.

General *locus standi* of the Petitioners Allowed.
Agent for Petitioners, Mains.

Petition of (2) THE SOUTH WALES MINERAL RAILWAY COMPANY.

Railways—Competition—Abstraction of Traffic—Portion of Railways parallel, but separated by a deep Valley—General locus.

The bill proposed the construction of a railway so as to run for a portion of its length parallel to, but separated by a deep valley from, the existing railway of the petitioners, who claimed a *locus standi* on the ground of competition. The promoters contended that though mathematically parallel, it was physically impossible that any competition could arise between the two railways, and that in any event the *locus*

standi of the petitioners should be limited to that portion of the proposed railway which would run parallel to their own railway:

Id., however, that the petitioners were entitled to a general *locus standi* on the ground of competition.

The *locus standi* of the petitioners was rejected to, because (1) the petition does not set out or show that any such competition between the petitioners and the promoters could be caused by or result from the bill, if passed, or by or from the works to be thereby authorised, as according to the practice of Parliament entitles the petitioners to be heard against the bill; (2) the petition does not set out or show that the bill contains provisions for taking or using any part of the lands, railway stations, or accommodations of the petitioners, or for running engines or carriages on or across the same, or for granting other facilities affecting the petitioners; (3) the allegations contained in paragraph 11 of the petition are irrelevant, and relate to matters which cannot possibly affect the petitioners; (4) the bill does not contain any provision excluding the petitioners; (5) the petition does not allege or show that the petitioners have any such interest in the objects and provisions of the bill as entitles them to be heard against it.

Jones (for petitioners): The bill takes power to construct a railway between Cymmer and Port Talbot with a fork to Briton Ferry. We object to the proposed railway on the ground of competition. Our railway forms the direct communication between Glyn Corrnog and Briton Ferry, passing Cymmer on the way, and the railway proposed by the bill will run parallel, though somewhat separated by a valley from our existing railway. We derive a large traffic from the collieries round about Cymmer which it is the object of the proposed railway to take from us.

Rodwell, Q.C. (for promoters): There is not only a river between the proposed line and the railway of the petitioners, but a deep valley some 100 feet deep intervenes between them, and there is no communication between the two sides of the valley, so that, from physical causes, we might as well be 100 miles apart. We start from the Rhondda Valley and tap an entirely different district, although we run mathematically parallel.

(*Per Cur.*) Your destination is the same, viz., Briton Ferry.

Rodwell: We have a branch to Briton Ferry; our principal line is to run to Port Talbot. The

length of line from Cymmer to Briton Ferry is eight miles.

The CHAIRMAN: The Court is of opinion that the petitioners are entitled to a *locus standi* on the ground of competition.

Rodwell: I presume that will be limited to the portion of the railway between Cymmer and Briton Ferry. Otherwise the whole question of competition will be fought over again as in the Lords.

Jones: It is all part of one scheme.

The CHAIRMAN: We feel a difficulty in limiting the *locus standi*. The Committee will judge of the extent to which the petitioners should be allowed to go.

General *locus standi* of the Petitioners Allowed.

Agents for Petitioners, *Dyson & Co.*

Agent for Bill, *Rees*.

RHYMNEY RAILWAY BILL.

Petition of (1) THE BRECON AND MERTHYR TYDFIL JUNCTION RAILWAY COMPANY; AND (2) LONDON AND NORTH-WESTERN, AND BRECON AND MERTHYR TYDFIL JUNCTION RAILWAY COMPANIES.

13th March, 1882.—(*Before Mr. FEMBERTON, M.P., Chairman; Mr. HINDE-PALMER, M.P.; Sir JOHN DUCKWORTH; Mr. RICKARDS; and Mr. BOWHAM-CARTER.*)

Railways—Competition—Abstraction of Traffic—Collieries—Traders as Owners of Private Railways—Agreements for Use and Working of such Railways—Permissive Powers of Bill as to.

Practice—Railway Companies as Joint Owners of Railway affected by Bill—Joint and Separate Petitions.

The bill contained powers for the promoters to enter into agreements with a large firm of colliery owners and iron masters (whose works practically supplied the traffic of the district) for the use working and maintenance of certain private railways connecting their pits and works with the system of the Great Western railway company, with whom also the bill authorised the promoters to enter into agreements. The petitioners, as joint owners of railways in competition with those of the Rhymney and Great Western companies for the traffic of the district, com-

plained that the result would be to absorb all the traffic from the collieries and works in question, and claimed to be heard against such a combination of railway companies and traders, on the ground of competition. It was answered that the collieries and works were already in connection with the railways of the Great Western company; that the power of agreement was merely permissive; and that as a matter of fact the traders in question could already enter into any similar agreement with regard to their private railways and the traffic thereon, without any Parliamentary powers such as those contained in the bill:

Held, however, that the petitioners were entitled to be heard against the bill.

Two petitions were presented against a railway bill (opposed by the petitioning railway companies on the ground of competition and abstraction of traffic) one by the company who were the original proprietors of the railway affected, and the other a joint petition by this company and a company who were joint owners of a portion of the original company's railways. The counsel for both petitioners declared that it was immaterial upon which petition a *locus standi* was obtained, but the Court determined to grant a *locus standi* upon the joint petition, disallowing the *locus standi* of the original company in their separate petition.

The *locus standi* of the Brecon and Merthyr Tydfil Junction railway company was objected to, because (1) no lands or other property of theirs are sought to be interfered with; (2) there is no competition sought to be created by the bill between the petitioners and the Rhymney railway company, who are the promoters of the bill, which entitles the petitioners to be heard according to practice; (3) no new competition between the promoters and the petitioners can arise under the bill, and the petitioners are not entitled to be heard on any contemplated improvement or variation of a competition already existing; (4) the petitioners do not allege any ground for a hearing according to practice.

The *locus standi* of the London and North-Western and Brecon and Merthyr Tydfil rail-

way companies was objected to in the same terms.

Pope, Q.C. (for petitioners (1) and (2)): The two petitions are practically identical, and it is a matter of indifference upon which petition a *locus standi* against the bill is obtained. For the sake of convenience they may be taken as one. The London and North-Western are joint owners of a part of the Brecon and Merthyr Tydfil railway, and their interest in the bill is co-extensive with their joint ownership. Surrounding Merthyr are a number of large ironworks, called Crawshay's works, which are all connected with private railways belonging to Messrs. Crawshay, those private railways forming junctions with the existing railways in the neighbourhood. The London and North-Western comes from Abergavenny, after running between Birkenhead and Abergavenny over the Hereford and Shrewsbury railway, thence by its own line to Dowlaish, and then it runs to Merthyr, over the line of which it is joint owner with the Brecon and Merthyr Tydfil company. The Taff Vale is a line which gives access to Cardiff. The joint line of the two companies connects at various places with the private railways of Messrs. Crawshay, and as a matter of fact the London and North-Western command the bulk of the traffic between Merthyr and Birkenhead. The Great Western is also at Merthyr, and no doubt is connected with those private railways of Messrs. Crawshay, but at present the Great Western route for Birkenhead and all districts north and east must necessarily be over a circuitous route, including the Vale of Neath, through Aberdare, Mountain Ash, and Quakers Yard. The Great Western is also at Cardiff and Newport. The Great Western is this year bringing forward a bill having much the same purpose as this bill promoted by the Rhymney Valley railway, and against that bill the London and North-Western are conceded a *locus standi*. If both bills are passed, one will, no doubt, be dropped, and we claim as competitors to be heard against both. Every company interested in this district should be heard, when this bill is discussed in Committee, for this reason, if for no other, that the Rhymney company in this bill seek for power to enter into agreements with Messrs. Crawshay, whose works are in fact the source of the whole traffic of the district, so that, if the bill passed, the Rhymney company (in fact, the Great Western company, with whom the promoters take power to make agreements) would be able to agree with Messrs. Crawshay for the use, working, and maintenance of their lines, and so absorb all the traffic to themselves.

s, Q.C. (for promoters): The Rhymney is one of the railways supplying Cardiff coal-fields and ironworks in this part, and the line proposed by the bill has object the conveyance of coal from Crawshay's pits south to Cardiff docks. Petitioners claim to be heard on the ground that the object of the bill is to divert this traffic to the Great Western, and by giving the railway company power to agree with the Great Western, practically to hand the control of the railway over to the Great Western. This agreement in no way affects the petitioners.

The traffic which is affected, if any, is traffic from Messrs. Crawshay's pits. Matter of fact, Messrs. Crawshay, apart from the bill, could make an agreement with any railway company they liked, and being individuals could give us leave to join them. At the present time it is open to them to send their traffic by whatever line they like. The power is not a compulsory one and could only be exercised by agreement with Messrs. Crawshay. It is merely a matter of their working their lines (which have connection with the Great Western) as to work them in connection with the Great Western. That is not a new competition, but at the most a strengthening of an existing competition.

CHAIRMAN: What distance would be required by this new line for traffic from these pits to Messrs. Crawshay going to the west?

Witness: It is 16½ miles to Quakers Yard by the existing line. By the new line it would be 14 miles.

CHAIRMAN (after deliberation): We think that *locus standi* ought to be allowed, and we have a better plan will be to give it on the petition.

Locus standi of the Brecon and Merthyr Tydfil junction railway company *Disallowed*.

Locus standi of the London and North-Western Railway Company and Merthyr Tydfil junction railway company *Allowed*.

Agents for Bill, Wyatt & Co.

Agents for Petitioners, Dyson & Co.

ROMFORD AND TILBURY RAILWAY BILL.

Bill of THE EAST AND WEST INDIA DOCK COMPANY.

March, 1882.—(Before Mr. PEMBERTON, M.P., Chairman; Sir JOHN DUCKWORTH; Mr. ARDREWS; and Mr. BONHAM-CARTER.)

—Railway and Dock Undertakings—
Land Scheduled—Proposal to limit

Locus Standi upon understanding between Parties—General locus.

The same land was scheduled by a railway and a dock company for the purposes of their respective undertakings, and upon this ground a limited *locus standi* was conceded to the petitioning dock company. Counsel for the petitioners, while contending that he was entitled to a general *locus standi*, offered on behalf of the petitioners to undertake to confine their opposition to the question of the piece of land scheduled by both parties, but this offer was not accepted by the promoters, who contended that the petitioners were only entitled to a limited *locus standi* according to practice: Held, however, that the petitioners were entitled to a general *locus standi* against the bill.

The *locus standi* of the petitioners was objected to in so far as they claimed to be heard generally against the bill.

Pope, Q.C. (for petitioners): We schedule the same piece of land for our docks as the promoters do for their railway. The promoters claim to limit our *locus standi* to the question of both parties taking the same piece of land. I will undertake, on behalf of the petitioners, to confine our opposition before the Committee to the question of this piece of land, and not to raise the question of competition, but I do not concede the point that we are only entitled to a limited *locus standi* on that ground.

Ledgard (for promoters): On behalf of the promoters, I cannot accept the suggestion that the petitioners are entitled to a general *locus standi* on the ground of both parties scheduling the same piece of land, as there are decisions to the contrary, and such a decision in the present case would be cited as overruling those decisions.

The CHAIRMAN: It will be a general *locus standi*.

Agent for Bill, Bell.

Agents for Petitioners, Sherwood & Co.

ST. HELEN'S (CORPORATION) WATER BILL.

Petition of (1) THE CORPORATION OF LIVERPOOL.

30th March, 1882.—(Before Mr. HINDE-PALMER, M.P., Chairman; Mr. PARKER, M.P.; Mr. MELDON, M.P.; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Water Supply by Municipal Corporation—Neighbouring Corporation—Agreement between, as to Water Supply, by one Corporation to the Other—Permission to Carry Water Main through District of Neighbouring Corporation—Alleged Evasion of Agreement by Bill—Necessity for Water Supply under Agreement Obviated—Injurious Affecting—Release from Terms of Agreement Sought by Petitioners—No Alteration in Status.

The bill authorised the corporation of St. Helen's to supply their own district with water. It was opposed by the corporation of Liverpool, on the ground that they were under an obligation, embodied in an agreement (come to between the two corporations, during the promotion of a bill in Parliament by the corporation of Liverpool in 1880), to supply the corporation of St. Helen's with a specified amount of water, when required to do so, on condition of the latter consenting to the carrying of a main through the St. Helen's district. The petitioners complained that in furtherance of this agreement they were compelled to make extensive arrangements for such water supply to the St. Helen's district, whereas under the bill the corporation of St. Helen's would acquire the power of supplying their own district with water, and thus postpone indefinitely the time when they would require to be supplied under the agreement by the petitioners, who had therefore (it was argued) been subjected to unnecessary trouble and expense in making the requisite arrangements. The petitioners claimed to be heard to obtain the insertion of a clause releasing them from the liability imposed by the agreement. It appeared, however, that no new works had been constructed by the petitioners to enable them to carry out

the agreement with the St. Helen's corporation, and further that the agreement was not affected by the bill:

Held, that under these circumstances, the petitioners were not entitled to a *locus standi*.

The *locus standi* of the petitioners was objected to, because (1) no lands or property of the petitioners will be taken or interfered with under the powers of the bill, nor will any of their rights, powers, or privileges be injuriously affected thereby; (2) the petitioners have only an easement in respect of the aqueducts, mains, and pipes already laid by them, and only a right to lay other aqueducts, mains, and pipes subject to the conditions and restrictions of the Acts under which they acquired their powers, and they are not entitled to be heard against the obtaining of similar easements or rights by the promoters, and the petitioners and their aqueducts, mains, and pipes are fully protected under the general law; (3) the promoters as an urban sanitary authority are entitled under the Public Health Act, 1875, to carry any mains or pipes through, across, or under any turnpike-road or street for the supply of their district with water, and the powers sought by the bill in this respect do not exceed the powers already conferred upon the promoters under the said Act; (4) the petitioners are not now, and may not for many years to come, be under any obligation to supply water to the promoters under the article of agreement referred to in paragraph 13 of the petition, and the petitioners are not entitled to be heard on that allegation or upon paragraph 14 of their petition; (5) the petition does not disclose any ground of objection to the bill, which, according to the practice of Parliament, entitles the petitioners to be heard.

O'Hara (for petitioners): The petition contains several allegations, but it only deals with two points. One is that the promoters, the corporation of St. Helen's, are seeking power to lay water mains in the district in which we have powers to lay water mains, and we claim, as having that power, to be protected. The second point is that we made an agreement with the corporation of St. Helen's to supply them with water, and that that agreement was the price we had to pay for the withdrawal of their petition in opposition to our water bill in 1880.

Michael, Q.C. (for promoters): On behalf of the promoters I concede the *locus standi* of the petitioners upon the first point—viz., the protection of their mains; and as to the second point, I admit the statement of fact as to the

between the two corporations and for it, but I do not admit that the bill is affected by the bill in such a way as to entitle the petitioners to be heard.

The first clause of that agreement, made in 1880, is this: "The Liverpool Corporation shall, if and when required by the Corporation of St. Helen's, at any time after the laying of an aqueduct or conduit from the Corporation of Liverpool to the Corporation of St. Helen's, shall be used for the supply of any water within the limits of the Liverpool Corporation, and shall furnish to the Corporation of St. Helen's a supply of water in bulk not exceeding 100 millions of gallons per day from the Corporation's main cut," and then follow clauses regulating the supply. As the Corporation of Liverpool withdrew their opposition, the Corporation of St. Helen's conceded that we would so arrange the laying of water pipes that we should be required, to give them this large supply of water. Under the bill they seek power to take water into their own district, and thereby make the date more remote at which they would be required to render themselves dependent of our supply. A price of 1000 gallons was to be paid for the water supplied, and the consideration for this was their allowing our pipes to be laid in their district. In consequence of the bill the promoters imposed upon us in the bill have been put to heavy expense, which will render useless to both parties. We are released from the liability imposed by the Act of 1880.

MR. KARDS: You contend that unless some clause were inserted in the bill, the bill would amount to an evasion of your agreement? : Yes.

MR. CHAIRMAN: At present they have an option which they may exercise or not. You contend that that option will not be exercised, and the exercise of it will be postponed for some period?

: Yes, and at the same time we have made an arrangement for supplying the Corporation of St. Helen's if required to do so.

(in reply): At the time that this Act was passed, the Corporation of St. Helen's were supplied with water in their district, as were the Corporation of Liverpool in their district. At that time pipes existing, called Rivington pipes, which supplied Liverpool Corporation. The Liverpool Corporation came to the Corporation of St. Helen's for the purpose of getting an additional supply through an additional main which was laid through the St. Helen's district. This was objected to by the Corporation of St.

Helen's, and in consideration of the St. Helen's Corporation withdrawing their opposition, the Corporation of Liverpool agreed that from part of the existing main, viz., the Rivington main, if required, they would supply the Corporation of St. Helen's with a certain quantity. As to any arrangements made by the petitioners, they have involved no expense whatever, no new main having been laid.

The CHAIRMAN: We think the petitioners are not entitled to be heard on this agreement.

Locus standi Disallowed, except as conceded upon the protection of mains, &c.

Agents for Petitioners, *Sherwood & Co.*

Petition of (2) THE LONDON AND NORTH-WESTERN RAILWAY COMPANY.

Railway Company as Canal Owners—Pollution of Brook running into Canal—Municipal Corporation under Statutory Obligation to purify Brook—Or in the Alternative, to Apply for Further Powers—Alleged Non-fulfilment of Obligation—Breach of Agreement—Obligations Conditional—Legal Remedy—Status of Petitioners not Affected by Bill.

The bill was promoted by a municipal corporation, who were, by virtue of a section of an Act obtained by them in 1869, under an obligation to improve and maintain the purity of a certain brook within their borough, and failing the necessary authority to do so, were bound by the same section to apply for further Parliamentary powers for that purpose within a stated period. The petitioning railway company were the owners of a canal, into which the brook flowed, in whose behalf the section referred to had been inserted in the Act of 1869. They complained that the state of the brook remained unimproved, in spite of their frequent remonstrances; that the promoters had failed to apply to Parliament for a bill effectually to carry out the purposes of the section referred to; and that the present bill did not contain any such provision. It was urged, in reply, that the obligation on the part of the promoters to apply for further Parliamentary powers with reference to the brook in question was conditional only

and that the statutory obligation imposed upon them, and consequently the remedy for its breach, was not affected by the bill :

Held, that the *status* of the petitioners was not affected by the bill, and that their *locus standi* must accordingly be disallowed.

The *locus standi* of the petitioners was objected to, because (1) no land or property of the petitioners will be taken or interfered with under the powers of the bill, nor will any of their rights, powers, or privileges be injuriously affected thereby; (2) the bill will not in any way affect the petitioners except as individual ratepayers, and as such they are not entitled to be heard; (3) the chief complaint set forth in the petition is as to the condition of Sankey brook, and certain statutory obligations imposed upon the promoters under the St. Helen's Improvement Act, 1869, but there is nothing in the bill touching, or in any way relating to, the said brook, or the said enactment, and the matter of complaint is entirely beyond the scope of the bill and of the Parliamentary notices; (4) the general law, and particularly the provisions of the Rivers Pollution Prevention Act, 1876, afford the petitioners a complete remedy for any well-founded complaint, but the promoters deny that the petitioners have any well-founded complaint; (5) the petition does not disclose any ground of objection to the bill which, according to the practice of Parliament, entitles the petitioners to be heard.

Pope, Q.C. (for petitioners): The London and North-Western company became, by the St. Helen's Railway and Canal Transfer Act (1864), the owners of the undertaking defined in that Act, which includes a canal called the Sankey canal. The Sankey brook is an important feeder of that canal, and the purity of the former is consequently of the utmost importance to the petitioners. The Sankey brook is for a considerable portion of its length within the borough of St. Helen's, and it is or might be within the power of the corporation to prevent the discharge into it of any sewage or other noxious matter. Accordingly, when the corporation were promoting in Parliament the bill which became the St. Helen's Improvement Act, 1869, the petitioners opposed the bill and obtained the insertion of the following section (172): "Whereas Sankey brook is at present the outlet for the drainage of a large area, which includes not only the borough but other large districts, and the London and North-Western railway company, as owners of the Sankey canal, are entitled to the use of the water running down such brook, and it is expe-

dient that the present condition of such brook should be improved, and the discharge thereinto of sewage, &c., be prevented so far as may be reasonably practicable, or purified before the same shall be so discharged, so far as may be reasonably practicable; but to effect such improvement further authority from Parliament may be required, therefore the corporation shall, within two years from the passing of this Act (unless in the meantime the condition of the Sankey brook has been so far improved), apply for and use their best endeavours to obtain an Act to provide for securing such improvement, and to obtain which the London and North-Western railway company shall afford all reasonable facilities." Since that date, viz., 1869, we have always urged upon the corporation the necessity and expediency of fulfilling their obligations with reference to Sankey brook, but without any result. The bill contains no provisions for enabling the corporation to deal with Sankey brook, nor does it seek to confer upon them any powers to fulfil their obligations under the Act of 1869 as set forth in the section above recited, and it is therefore in effect an evasion on the part of the promoters of their statutory obligations. We ask that the promoters may not be heard in favour of the bill without our being heard for the insertion of a clause to compel them to carry their compact of 1869 with us into effect, this being the first time the corporation of St. Helen's have been before Parliament since 1869.

Mr. RICKARDS: Would not a *mandamus* lie to compel the corporation to apply for a bill?

Pope: That is more than doubtful.

Mr. RICKARDS: The legal remedy which the petitioners possess under the Act of 1869 is not affected by the bill. It would be a great extension of our jurisdiction if we were to give *locus standi* to parties who did not complain of anything specific in the bill.

Michael, Q.C. (for promoters): To give the petitioners a *locus standi* against a bill which does not affect them would create an entirely new precedent. The stipulation, contained in the section referred to, that the corporation shall apply for a bill, is conditional, and the application to Parliament by the corporation is to be dependent upon a state of facts. Anything not contained in the bill cannot be petitioned against. The *status* of the petitioners in relation to this matter is not altered by the bill.

The CHAIRMAN: We think we cannot extend our jurisdiction in this case so far as to allow the *locus standi* of the petitioners.

Locus standi of the Petitioners Disallowed.

Agent for Petitioners, *Roberts*.

Agents for Bill, *Sharpe & Co.*

SOUTHAMPTON HARBOUR BILL.

Petition of (1) SOUTHAMPTON DOCK COMPANY.

20th March, 1882.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. PARKER, M.P.; and Mr. RICKARDS.)

Competition, between Dock Company and Harbour Board—Warehousing of Goods, Competition as to—Silting-up, Apprehended, of Entrance to Docks—Navigation, Obstruction to, by New Works—Lighthouse Dues, Complaint of Imposition of, by Dock Company—Competition, New and Existing—Dredge, Obligation to—By Dock Company, on Site of New Works.

The harbour board of Southampton, constituted in 1803, and authorised then to charge tolls upon goods landed on or shipped from the town quays, now proposed (*inter alia*) to extend their quay, construct a jetty, warehouses, and other works, and to establish a lightship or lighthouse and charge light dues on vessels entering the port. The dock company of Southampton objected that by means of the new works the harbour board would virtually compete with them, and that the works would obstruct the entrance to their docks by silting. They also sought to be expressly relieved from a statutory obligation to dredge on the site of the proposed new jetty:

Held, that there would be no new competition under the bill entitling the petitioners to be heard against it, but that, in order to obtain relief from the obligation to dredge, they might be heard against the sub-section relating to the construction of the new jetty, subject to objection before the Committee by the promoters, if necessary, that the petitioners should be limited to the allegations in their petition on this point.

The *locus standi* of the Southampton dock company was objected to, because (1) the petitioners cannot be heard upon their complaint of past competition, and the future competition they refer to, if any should be caused, will be not a new competition, but a further development of a competition already existing; (2, 3, and 4) the apprehensions of the petitioners as

to the probable effect of the proposed works are wholly unfounded, but, assuming the contrary, the petitioners allege no ground entitling them to be heard; it is not alleged that the apprehended silting-up will affect their rights or interests; and no land, building, or work of theirs is liable to be taken or interfered with under the bill; (5) the competition for the warehousing of goods is not a new competition, or one entitling the petitioners to a hearing; (6 and 7) they will not become liable to the payment of any of the rates, tolls, &c., authorised by the bill, and they are not entitled to be heard against those rates, tolls, &c., as representing the trade and commerce of the port of Southampton; (8 and 9) the effect of the bill will be to increase the amount payable by the promoters to the corporation, and thus to diminish the amount payable by the petitioners as ratepayers, but even were it otherwise the petitioners are not entitled to be heard as ratepayers, not having in that character any interest differing from that of the general body of ratepayers liable to the town rates; (10) the petition discloses no ground on which, according to practice, the petitioners can be heard.

Clerk, Q. C. (for petitioners): The bill is one for conferring further powers upon the Southampton harbour board for the construction of works, the levying of rates, &c. The board was constituted in 1803. Under Acts of 1863 and 1877, the management of the port and harbour of Southampton, and of the pier, was vested in the board, and they now seek powers to widen and improve the pier, extend their quays, construct a jetty, erect warehouses, lay down additional tramways, and dredge, deepen, and light the entrance to the harbour. The bill will also authorise the board to levy tolls, rates, &c., in respect of the works and improvements authorised by the Act, and to alter and amend in some respects the tolls, &c., leviable under the Act of 1863. The port extends for many miles down the Southampton water, and up to Redbridge and Northam in the river Itchen. The board were empowered by their original Act to make docks and basins, &c., but did not exercise those powers; and the petitioners were accordingly incorporated in 1836 with a view to afford such accommodation to the shipping frequenting the port. We have since constructed large docks, a tidal basin, graving docks, bonded warehouses and vaults, and have expended upon them £1,144,711. The same parties were before the Court in 1877 (*Southampton Harbour Bill*, 2 Clifford & Rickards, 68), but that was only a money bill. Under the present bill the harbour board not only ask for power to raise £100,000, but to carry out extensive works

which will entirely change the nature of their trust as one for maintaining and improving the harbour, and they will practically become competitors with us as dock owners.

Mr. RICKARDS: I do not see anything about docks in the bill?

Clerk: No, but the proposed jetty and other works will really make a tidal dock, thus accommodating vessels which otherwise would discharge their cargoes in our docks.

Mr. RICKARDS: Are the powers given to the board by the Act of 1803, to make a wet dock and basin, &c., still alive?

Clerk: We say no. The warehouses which the board now for the first time seek power to construct will be also in direct competition with us. Further, we say that some of the proposed works, especially the extension of the town quay and the making of a jetty, will tend to create obstacles to navigation near our works, and to silt up the water on the western side of our property. We are liable under statute, at the request of the board, to cleanse and scour the space between the town quay and the western boundary of our property; but if this jetty is made, as the board intend to make it under the bill, we should be prevented from discharging that obligation, and ought to be relieved from it. We are advised that the removal in whole or in part (under clause 10) of the bar situate to the north-west of the entrance of the river Itchen, and of the bank known as the Knock, will tend to silt up the channel of the river Itchen, in which the entrance to our docks is situate. This is a matter of serious importance to us, and we ask to be allowed to bring it under the consideration of the Committee. We also say that the power sought by the board to provide and maintain a lightship or lighthouse, and levy dues in support of it, will create an additional burden upon ships using our docks, and we submit that such expenses should be paid out of tonnage and tonnage rates, which the board are now authorised to levy.

The CHAIRMAN: You do not pay those dues. The complaint is one which should be made by the shipowners. The owner of a public-house frequented by railway travellers could not well be heard to complain of an addition to the existing fares?

Clerk: The complaint is made by the dock company on behalf of the shipowners, as well as on their own behalf, for if you put an additional tax on ships frequenting the port, they may go elsewhere.

Ledgard (for promoters): The assumption that we are going to make a wet dock in competition with the Southampton docks is entirely

fallacious. All we do is to extend the town quay, in respect of which we already have power to levy tolls, and to make a jetty 135 yards long. Can it really be contended that the extension for about one-third of its length of a quay, which has been in existence from time immemorial, and the making of this new jetty, constitute a competition with the Southampton docks?

Mr. RICKARDS: The question is whether the accommodation you propose to give, by means of the works to be authorised by the bill, will practically, in any degree, serve the purpose of docks, and supersede *pro tanto* the use of the petitioners' docks?

Ledgard: That is to say, whether they will create a new competition. The question, I submit, is sufficiently answered by contrasting the two kinds of works. Those of the dock company are deep water docks for the accommodation of large ocean-going steamers. For years past we have accommodated at our existing quays a smaller kind of vessels; and by extending the quay and putting up this little jetty, we do not create any new competition entitling the petitioners to be heard. To justify their *locus standi*, it is not enough to show an unreasonable apprehension of competition; petitioners must set forth a reasonable apprehension of substantial injury. The bill contains no power to create docks.

Mr. RICKARDS: The question is whether these are docks in disguise—whether, under this bill, you can render any services to shipping such as are now rendered by the dock company so as to abstract profit from them?

Ledgard: We can in no way compete with deep water docks like those of the company. We now have a quay 900 ft. long. We propose to extend it by 300 ft. The depth of water at the end of the 900 ft. is 18 ft., and the depth will be the same at the end of the extension. As to warehouses, the Act of 1863 authorises us to take tolls in respect of them, so that the board must have had power to construct warehouses under a previous Act. Last year, in the *Bristol Docks Bill* (3 Clifford & Rickards, 7), owners of warehouses were not heard. As regards the obligation on the dock company to dredge near the town quay, we should not be likely to call upon them to dredge on the site of our new jetty. If, however, they feel any apprehension upon that score, I concede that they may be heard, not against the clause authorising us to construct the jetty, but in order to protect themselves as regards the statutory obligation to dredge on the site of it.

The CHAIRMAN: We must give the petitioners

is against a clause, and the clause to construct the jetty is clause 5, 1. The petitioners will be limited in their petition as regards this will be a matter for objection, before the Committee. The of the petitioners on the other points is disallowed.

of Southampton dock company except against clause 5, sub-section of jetty).

Petitioners, *Goodhart & Medcalf*.

(2) HYTHE PIER AND HYTHE AND TOWN FERRY COMPANY, LIMITED; AND FREDERICK FRY AND OTHERS.

1882.—(Before the Court, as above) and 18th April, 1882.—(Before BERTON, M.P., Chairman; Mr. HINDE, M.P.; Mr. PARKER, M.P.; Sir JOHN H. H. H.; Sir F. S. REILLY; and Mr. BARTER.)

on Goods and Passengers at Town Quay; Tolls on Goods and Passengers by Ferry on one side of Ferry Depreciated by the other side—Inhabitants using Ferry complaining of New rates.

hearing, power of, exercised by Court—misapprehension of Facts, by Court—Rehearing.

board in the port of Southampton, now used to charge tolls on imported goods at the town quays and on goods landed there for export, promoted a bill which they sought to extend those tolls to goods and passengers landing there, and to any destination. A pier and ferry steamboat company, owning a pier at Hythe, situate within the port of Southampton, had for some years run boats to and from the town quays at Southampton, landing goods and passengers there free of charge. They now acted on the ground that, under the bill, they would be exposed for the first time to the payment of rates in respect of goods and passengers:

as the company had carried on their business till now without the payment of tolls, and as that business might fall off

through the imposition of such tolls, they were entitled to be heard on this part of the bill, as were also other petitioners, being landowners, traders and inhabitants of Hythe, who complained that, Southampton being the market of Hythe, their property would be depreciated and their interests would suffer in like manner under the bill.

The Court, upon rehearing a case, its decision respecting which had been arrived at under misapprehension of the facts, reversed the decision:

(*Per Cur.*) "There is no doubt that the Court have the power of rehearing if their decision was arrived at under misapprehension. It would be very inconvenient, indeed, if the Court had not such a power."

The *locus standi* of the Hythe pier and Hythe and Southampton ferry company, limited, was objected to, because (1) assuming the statements in the petition to be correct, which the promoters deny, the petitioners allege no ground entitling them to a hearing; (2 and 3) the bill contains no provision affecting their rights or privileges under their Order of 1878, or the custom of landing goods and passengers at the town quay; (4) the promoters deny that the effect of authorising a charge for passengers and goods landed at the town quay will be to injure the petitioners; but even assuming such injury the petitioners have no rights upon the town quay, or control or interest in its management, entitling them to be heard; (5) they do not represent the inhabitants of Hythe and Southampton, and cannot be heard on their allegations of possible injury to such inhabitants; (6 and 7) no ground of competition is disclosed, and no other allegation entitling the petitioners to be heard according to practice.

The *locus standi* of (3) Frederick Fry and others was objected to, because (1) no property of theirs is affected; (2) they are not the municipal, sanitary or other authority, having the local management of any town or district alleged to be injuriously affected; (3) they have no separate or distinct interest entitling them to be heard, and are only affected by the bill, if at all, as other inhabitants of the same town or district are affected; (4 and 5) the petition is not sufficiently signed either by landed proprietors, merchants, traders, or other inhabitants of Hythe or Southampton, to

entitle the petitioners to represent those inhabitants, and they make no allegation on which they can be heard according to practice.

At the hearing on March 20, *Michael*, Q.C., appeared for these two sets of petitioners, and, after argument, their *locus standi* was *Disallowed*. On April 18—

Michael, Q.C., applied to the Court to rehear both cases, on the ground that at the hearing on March 20, there had been a misapprehension of the facts by the Court. On more than one occasion upon a like ground, the Court had exercised their power of rehearing. (*Scotch Burghs case*, 1 Clifford & Stephens, 85 (*text*); *Merionethshire Railway Bill*, 2 Clifford & Stephens, 182).

The CHAIRMAN: There is no doubt that the Court has the power of rehearing a case, provided that the decision to which the Court came at the first hearing was arrived at under a misapprehension. It would be very inconvenient, indeed, if the Court had not such a power.

Michael: My argument on behalf of both sets of petitioners was that they were within the port of Southampton, and that a new toll was to be imposed upon them, which would seriously injure the value of their property. As I now understand, the impression in the mind of the Court was, that a power had previously existed on the part of the harbour board to levy this toll, but that they had not exercised the power; that this was merely a re-enactment of the existing power which they were now going to carry out for the first time, and therefore no *locus standi* could be given, the petitioners' complaint being merely one of past legislation. If that were so, I should not have a word to say, but the facts are these:—By their existing Act the harbour board of Southampton were empowered to levy tolls upon all goods imported or exported from the port, whereas under the bill what is proposed is a toll to be levied for the first time upon goods passing from one portion of the port to the other, namely, from Hythe to the public quay at Southampton, on arriving at which, goods would at present be free from the imposition of any toll. The same thing applies to passengers. The existing Act said that the board might levy tolls upon passengers landing at the corporation pier, but that passengers arriving at the public quay were exempt from tolls. Now for the first time a toll is imposed upon passengers arriving at that quay. In further detail our case is this:—The petitioning company were established by Provisional Order in 1878, for the construction of a pier at Hythe, three miles from Southampton. Clause 16 of the

bill enacts that the rates which the harbour board are, by the Act of 1863, authorised to take in respect of goods, "shall be payable in respect of all goods landed at or deposited upon any quay, wharf, pier, pontoon, landing-stage, land, or any other legal quay belonging to the board, although such goods shall not have been imported into, or shall not be intended to be exported from the port." Clause 17 enacts, that the pier tolls payable in respect of passengers under the Act of 1863, "shall be payable in respect of all passengers, porters, barrowmen, and other persons landing at or embarking from any pier, quay, wharf, jetty, pontoon, landing-place, or other work from time to time belonging to the board." At the present time, as I have said, this liability does not attach to persons and goods landed by us at the town quay. The bill, therefore, will impose a new burden upon the passengers and goods we land there, and the effect will be to diminish by this new burden the number of persons using our pier and ferry, and thus depreciate the value of our property. Hythe being within the port of Southampton, there has always been considerable communication between the two places, passengers and goods being landed free of charge at the town quay. Relying upon this custom and right, we took powers under the Order of 1878 to raise capital and construct a pier at Hythe for the accommodation of the traffic to and from Southampton, and we have leased the tolls to the proprietor of the ferry-boats plying between the two places. The value of our undertaking will obviously be injured materially under the bill, and we ask to be heard against the provisions affecting us. A case in point is the *Lewick Harbour Improvement Bill* (2 Clifford & Rickards, 25). The same point is raised in the petition of Frederick Fry and others, who are merchants, traders, and other inhabitants of Hythe and represent a class. They say that, Southampton being the market of Hythe, the imposition of the proposed toll would put a check upon building in Hythe, and deteriorate the value of their property.

The CHAIRMAN: Do these persons petition as passengers or only as landowners?

Michael: They petition in every capacity; as landowners, as farmers, as inhabitants, and as persons using the ferry, who must either go round ten or twelve miles, or else submit to a tax now proposed to be levied upon them for the first time.

Ledgard (in reply): The petitioners in neither case have a right to be heard, and in no similar case have such petitioners been heard. First, as to the pier and ferry company, it is not their

but the passengers and the freighters the tolls. If even the business of the was shut up through the operation tolls, the company could have no *locus* ere being no case of competition.

AIRMAN: The question is whether passengers and goods between Hythe and South-ow landed free at the town quays, will be subject to a toll.

l: I do not deny that passengers y this ferry will have to pay a toll for ime if they land at our town quay or w jetty; but that does not give the pany, or the inhabitants of Hythe, a be heard against the imposition of a pier which belongs to us, and has ; with our money, any more than the board of Southampton, or the inhabi-outhampton would have a right to be ainst the imposition of a toll at the r. This is not the case of a compul-; the petitioners are not obliged to ur pier.

l: They must go round ten or twelve hey do not. I am told you had a di against our pier.

l: If we had, it was the fault of the r for not objecting to our *locus standi*.

AIRMAN: Can the harbour board or the f the quays, which are used free at top the ferry company from landing

: No, it is a public quay.

AIRMAN: Then in order to carry on ness as at present, the ferry company bjected to this new toll?

l: That is to say, their passengers hters will. It is not a tax upon the so is distinguished from the *Lerwick* ase, which was that of a new tax upon shipping. The ferry company ore right to complain of this imposi-

new toll than a man who let out ould be entitled to complain of a new upon a public road. Petitioners (3), d as inhabitants, have no more right to e imposition of tolls at Southampton bitants of Southampton would have the imposition of tolls at Hythe; and they do not represent a class neces-cted by the imposition of a toll, for onal with them to come to this pier

l: Southampton is their market, and t come to it.

d: Then it is said they are within the so, the harbour board represents them, are seeking to be heard against the eal.

Michael: That is not so, for we do not vote for the harbour board.

The CHAIRMAN: The Court have decided to allow the *locus standi* of both sets of petitioners against clauses 16 and 17, and so much of the preamble as relates thereto.

Locus standi Allowed, as limited.

Agents for both sets of Petitioners, *Baxter & Co.*

Agents for Bill, *Sherwood & Co.*

SOUTH-EASTERN RAILWAY (NEW LINES AND WIDENINGS) BILL.

Petition of (1) THE BOARD OF WORKS FOR THE ST. SAVIOUR'S DISTRICT; (2) THE VESTRY OF THE PARISH OF LAMBETH; (3) THE VESTRY OF ST. GEORGE-THE-MARTYR, SOUTHWARK; (4) THE VESTRY OF ST. MARY'S, NEWINGTON.

18th April, 1882.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE-PALMER, M.P.; Mr. PARKER, M.P.; Sir JOHN DUCKWORTH; Sir F. S. REILLY; and Mr. BONHAM-CARTER.)

Railway—New Works—Crossing of Streets by Arches—Roads Injuriously Affected—Vestries as Local and Road Authorities—Metropolis Management Act, 1855—Road Authorities, how far Affected as Landowners—Solum of Roads—Coverdale v. Charlton—S. O. 134 (Municipal Authorities and Inhabitants of Towns)—Injuriously Affecting Districts—Lands Clauses Act, 1845, section 92—Demolition of House Property—Diminution in Rates.

The bill was an omnibus bill authorising, *inter alia*, the construction of new railways and the widening of existing railways, in the parishes of which the petitioners were respectively the local and road authorities. The proposed new railways and widenings were, under the powers of the bill, to be carried across certain streets in the districts of the petitioners by means of arches, which the petitioners alleged would require such a low headway as to be inconvenient and dangerous. The petitioners claimed to be heard generally on their petitions (1) as the road authority in whom the *solum* of the road was vested under the Metropolis Management Act, 1855 (*Coverdale v. Charlton* cited); (2) under S. O. 134, as the local authority

of a district injuriously affected ; and (3) in respect of rates, on the ground that the demolition of house property authorised by the bill for the purposes of the proposed works would cause a diminution in the amount of rates. It was urged on behalf of the promoters that the *locus standi* of the petitioners, if allowed, should be limited to the question of protection for the roads and sewers in their districts :

Held, that all the petitioners were entitled to be heard generally against so much of the bill as authorised the construction and widening of railways within their respective districts.

The *locus standi* of (1) the St. Saviour's district board of works was objected to, because (1) the petition does not allege or show, nor is it the fact, that any land or property, right or interest of the petitioners will be, or can be, taken or affected under the powers of the bill ; (2) the petition does not allege or show that the roads, streets, or thoroughfares mentioned in the petition, and which it is alleged will be crossed by some of the proposed works, are vested in the petitioners, or that they have the control, care, or management of such roads, streets and thoroughfares ; (3) so far as the objections of the petitioners relate to the taking of part only of lands, buildings, and manufactories, being private property, the petitioners have no interest, but the right of petitioning rests with the parties whose property is proposed to be taken or interfered with ; (4) even if the petitioners be entitled to be heard at all against the bill, which the promoters deny, they can only be admitted to be heard for the purpose of protecting the roads, streets and public thoroughfares against such parts of clause 5 of the bill as may interfere therewith ; (5) the petition does not show that the petitioners have any such interest in the objects and provisions of the bill as entitles them to be heard against it.

The *locus standi* of (2) the vestry of the parish of Lambeth was objected to, because (1) the petition does not allege or show, nor is it the fact that any land or property, right, or interest of the petitioners other than the streets, roads and public thoroughfares, and the sewers and drains in the parish of St. George-the-Martyr, Southwark, alleged by the petitioners to be under their care and management, will be taken or affected under the powers of the bill or in consequence of the execution thereof ; (2) except so far as regards any inter-

ference with the streets or roads severally called Southwark Bridge-road, Blackman-street, New Kent-road, and the Old Kent-road, and the sewers and drains mentioned in the petition and alleged to be under their care and management, the petitioners have not, and do not allege any right or interest entitling them to be heard according to practice ; (3) the petitioners, if entitled to be heard at all, are only entitled to be heard for the purpose of protecting the roads, streets, public thoroughfares, sewers and drains against such parts of clause 5 of the bill as may interfere therewith, and against such parts of the preamble as relate thereto ; (4) the transfer of property to the promoters for the purposes of the bill will not exempt it from rateability, and does not give the petitioners a right to oppose the bill on that ground, nor as a matter of fact will the rates be diminished ; (5) so far as the objections of the petitioners relate to the taking of, or interference with, private property, rights, or interests, the petitioners have no interest or right to be heard, but the right of petitioning rests with the parties whose property, rights and interests are proposed to be taken or interfered with.

The *locus standi* of (3) the vestry of St. George-the-Martyr, Southwark, and (4) the vestry of St. Mary, Newington, was objected to upon similar grounds, *mutatis mutandis*, to those taken in the case of the Lambeth vestry.

Balfour Browne (for petitioners (1)) : The bill authorises the promoters to make and maintain railways Nos. 1, 2 and 3, and also to carry out widenings of their existing railways, *viz.*, widenings 3, 4, 5 and 6 within our district. We allege that it is proposed to carry the railways and widenings authorised by the bill across several of the principal thoroughfares in our district by means of arches with a headway of only 18 ft. The petition goes on to specify the different streets which are to be crossed by arches with this low headway. In many cases the headway of the proposed arches will be considerably lower than that of existing arches belonging to other railway companies, while the width of the street is very great. The petition gives reasons against this low headway, and also points out that the proposed arches and bridges should be constructed water tight, and so as to prevent vibration from passing trains. We also claim to be heard on behalf of our district against the clause in the bill empowering the promoters, notwithstanding section 92 of the Lands Clauses Consolidation Act, 1845, to take part only of premises which they intersect by their works.

Worsley Taylor (for promoters) : That power is struck out of the bill.

We have to deal here with the bill d. With regard to objections (1) and *locus standi*, under the Metropolis Act, 1855 (18 & 19 Vic., cap. 120, the roads and streets within the are vested in the local board, and the *verdale v. Charlton* (L.R. 4 Q.B.D. es that vesting must be taken to mean ership in the road authorities of so ie soil as is required to support the ve are therefore clearly entitled to a *locus standi*. With regard to the 4th he promoters seem to imply that we itled to a limited *locus standi* for the protecting our roads and sewers.

CHURMAN: Have the Court ever given a *locus standi* to the vestry or body in treets are vested?

A general *locus standi* was given to of St. Mary's, Newington, against ondon Market Bill [*infra*, p. 223]. Ac- the deposited plans they take power a street called America-street.

Taylor: There is no allegation in the that effect.

No such allegation is neces- we allege that we are the road nd that the streets are injuriously In the *Lancashire and Yorkshire ill* (2 Clifford & Stephens, 173, fford & Rickards, 236), it was t the local authority was the y to oppose obstruction to a road, ate owners were heard. The corpora- sley have been heard against the a of an arch with a low headway, y the Caledonian railway company. m the Cheshire lines committee o darken a street by making a y, that proposition was defeated osition of the corporation of Man- l appear also for petitioners (2) h vestry, who make allegations of a racter to those contained in the the St. Saviour's board, and the ents apply.

Will (for petitioners (3)): The petitioners is very much the same as tioners (1), and the same arguments *mutandis*. We have also been a notices as landowners. I refer o the dictum of Mr. Rickards, in d the *Metropolitan Railway Bill*, the *Whitechapel Board of Works*, & Stephens, 238), commencing inly would have a right to appear bill proposing to interfere with a." The question appears to : we are entitled to a limited or

a general *locus standi*. The bill is an omnibus bill, and we only claim to be heard against the parts of it which affect our parish, and which are specified in our petition, but upon that petition we claim a general *locus standi* under S. O. 134, and also as landowners. (*Metropolitan and Metropolitan District Railway Companies Bill*, 2 Clifford & Rickards, 190.) We also claim a *locus standi* on another ground, viz., "That a very large quantity of very valuable property in respect of which local and other rates are now payable to your petitioners will be taken for the purposes of the said railways, and your petitioners will be deprived of the rates now payable in respect of those properties, to the great loss and injury of your petitioners and the inhabitants of the parish."

Ledgard (for petitioners (4)) urged similar arguments in favour of the claim of the petitioners to a general *locus standi*. He cited the cases of the *North-Eastern Railway Bill*, *Petition of the Corporation of Middlesbrough* (2 Clifford & Stephens, 148), and of the *South London Market Bill*, *Petition of the Parish of St. Mary, Newington* [*infra*, p. 223], and distinguished the case of the *Cheltenham Corporation Water Bill*, *Petition of Charlton Kings Local Board*, (2 Clifford & Rickards, 84).

Worsley Taylor (in reply): I do not contend that those vestries which allege in their petitions that the streets are their own have not a *locus standi* against so much of the bill as refers to the crossing of particular streets, but I contend that they are not entitled to a general *locus standi*.

The CHAIRMAN: We think, although a particular vestry do not allege in their petition that they are the owners of the roads, we must assume that the public roads are vested in them.

Taylor: With regard to the claim of the petitioners to be heard generally as road authorities, none of them say that we intend to appropriate and use any part of the soil of the street.

The CHAIRMAN: The words "cross and interfere with" occur in the petitions. Must not you permanently occupy part of the street by the construction of the buttresses of your arches?

Taylor: I do not know that that follows.

Browne: A bridge over a street is an occupation of the soil.

Taylor: No doubt in the case of ordinary landowners the principle *cujus solum, ejus est usque ad cælum* would apply, but the road authority are only the trustees of the surface for the public.

Sir F. S. REILLY: What do the deposited plans show with reference to America-street?

[The plans were referred to, from which it appeared that America-street was to be stopped up.]

Taylor: S. O. 134 furnishes an argument in my favour, as it gives a discretionary power to the Referees with regard to local authorities, which would not be the case if a road authority was to be regarded as owner of the roads. With regard to diminution of the rating area, the case of the *Cheshire Lines Committee Bill, Petition of the Local Board of Tortoth Park* (3 Clifford & Rickards, 29), is conclusive against the petitioners. Moreover, there are special provisions in the Lands Clauses Act for dealing with a deficiency in the rates during construction, after which time the railway would pay more in rates than the property which was destroyed.

The CHAIRMAN (after deliberation) : The decision of the Court with regard to the *locus standi* of the several vestries is as follows:—

Locus standi of (1) the Board of Works for the St. Saviour's District *Disallowed*, except as against so much of clause 5 as relates to Railways Nos. 1, 2 and 3, and to widenings Nos. 3, 4, 5 and 6, so far as those railways and widenings are within the District of the District Board of St. Saviour's, and so much of the preamble as relates thereto.

Locus standi of the Vestry of the Parish of Lambeth *Disallowed*, except as against so much of clause 5 as relates to widenings Nos. 1, 2 and 3, so far as those widenings are within the District of the Vestry of the Parish of Lambeth, and so much of the preamble as relates thereto.

Locus standi of the Vestry of St. George the Martyr, Southwark, *Disallowed*, except as against so much of clause 5 as relates to Railways Nos. 1 and 2, so far as those railways are within the District of the Vestry of St. George the Martyr, Southwark, and so much of the preamble as relates thereto.

Locus standi of St. Mary's, Newington, *Disallowed*, except as against so much of clause 5 as relates to Railways Nos. 1 and 2, so far as those railways are within the District of St. Mary's, Newington, and so much of the preamble as relates thereto.

Agents for Petitioners (1), *Sherwood & Co.*

Agent for Petitioners (2), *H. J. Smith.*

Agents for Petitioners (3 and 4), *Simson, Wakeford & Co.*

Petition of (5) THE METROPOLITAN DISTRICT RAILWAY COMPANY.

Railway Bridge, Widening of — Underground Railway under Street crossed by proposed Widening—Street Scheduled, for purposes of

Bill—Physical Interference with Petitioners' Railway—How far possible, according to Plans and Sections—Future Enlargement of Petitioners' Station prevented—Landowners' Notices Served.

The bill, *inter alia*, authorised the widening of a railway bridge carried over a street, under which the underground railway of the petitioners was situated, and compulsory powers were taken over this portion of street. The petitioners were not owners of the soil of the street, but were by their Acts possessed of an easement through the sub-soil. They claimed to be heard on the ground that compulsory powers were taken over their property, which appeared in the schedule of the bill and the book of reference, and as to which they had been served with landowners' notices. It was also pointed out in argument that the effect of the widening would be to prevent any future enlargement of the petitioners' railway station situated in the street in question. On behalf of the promoters it was contended that the petitioners had no property in the soil of the street, and that the plans and sections, in accordance with which the works authorised by the bill would have to be constructed, showed no interference with their railway :

Held, however, that the petitioners were entitled to be heard against so much of the bill as authorised the widening of the bridge underneath which their railway ran.

The *locus standi* of the petitioners was objected to, because (1) the petition does not allege or show, nor is it the fact, that any of their land, houses, property, rights or interests will be taken or affected under the powers of the bill, or in consequence of the execution thereof; (2) the objections raised in paragraph 3 of the petition to land being taken under the powers of the bill, which the petitioners now have no right or interest in, but which they may hereafter require, does not entitle them to be heard against the bill; (3) the petition does not show that the petitioners have any such interest in the objects and provisions of the bill as entitles them to be heard according to practice.

Pope, Q.C. (for petitioners) : The ground of the petitioners' *locus standi* is that, according to the powers of the bill, the promoters actually

have power to take the Metropolitan railway, the petitioners having been with notice as landowners in respect of y which is described as their railway and n the schedule annexed to the bill. The olitan district company did not acquire ership of the land through which their s constructed, but special clauses were o them enabling them to acquire an at under streets and roads throughout ropolis, and we own not the soil, but the constructed within the soil. By clause bill, the promoters take power, *inter alia*, n their Charing Cross railway bridge, hich our railway is constructed, and, as al to that widening, they take power to e with the street underneath the bridge. vers taken over the street include power e soil under the street, and that soil and contains our railway. Carrying a over the street is as much a trespass at street as laying rails over its surface. roachment by buttresses upon the street orb part of the surface, which may here- required for the enlargement of the ers' Charing Cross station.

ey Taylor (for promoters): As regards ice to the petitioners as landowners, as served *ex abundante cautela*, and conclusive. The surface of the soil street is not in the petitioners, nor property in the soil itself, which then give them rights *usque ad* but they merely have an easement for poses of their railway at a certain below the surface. We do not infringe at easement, or touch their tunnel. We he construction of our widenings and the ecessary thereto, restricted to the works a in the plans and sections, and they do r any interference with the petitioners' or tunnel. All we ask is for power to r their railway in the air.

Clause 5 says that the promoters " may a, take and use such of the lands de- upon the deposited plans and described oposed Books of Reference as may be for that purpose." In the Book of e is No. 3, and No. 3 is our property.

ey Taylor: All that is subject to the d plans of works, which would in this vent us from touching them at all.

HAIRMAN: We think the petitioners are to a *locus standi*.

standi of Petitioners Disallowed, except ist so much of clause 5 as relates to ; railway, No 1, and so much of the as relates thereto.

s for Petitioners, Dyson & Co.

Petition of (6) THE SOUTHWARK AND VAUXHALL WATER COMPANY.

Railway Works—Water Company—Apprehended Interference with Mains and Pipes by Proposed Works—Railways Clauses Consolidation Act, 1845—Protection under—Acquisition of Houses, &c., by Promoters—Apprehended Diminution of Water Rates.

A water company claimed to be heard against a railway bill, on the ground of (1) interfer- ence with their mains and pipes by the works authorised by the bill, and (2) diminution in their water rates by the acquisition of the site and soil of certain houses by the promoters. It was answered that, on the first point, they were amply protected by the provisions of the Railways Clauses Act, 1845; and, on the second point, that the houses in question already belonged to the promoters, who could therefore at the present time deprive the petitioners of the water rates derived from them:

Held, that the petitioners were not entitled to a *locus standi* against the bill.

The *locus standi* of the petitioners was ob- jected to, because the petition does not allege, nor is it the fact, that any land, rights or interests of the petitioners will be taken or affected under the powers of the bill or in con- sequence of the execution thereof; (2) the alle- gations in the petition that the works sought to be authorised would materially interfere with and prejudicially affect various mains and pipes belonging to the petitioners, laid down in the district mentioned in the petition, do not entitle the petitioners to be heard against the bill, because the petitioners have only an easement to lay such mains and pipes and are not the road authority in whom the control of the public roads is vested. The bill only contains the usual and necessary clauses granted in such cases, and the petitioners do not specify any of their mains and pipes, which are to be interfered with under the provisions of the bill. In any view such allegations do not entitle the peti- tioners to be heard against the preamble; (3) the petitioners are sufficiently protected by the general acts incorporated with the bill against any interference with their mains and pipes, and it is denied that the execution of the works authorised by the bill would occasion any

damage to the petitioners, or that the supply by them of water to their consumers would in any way be interfered with or endangered; (4) the stopping up of North Kent-terrace and the vesting of the site and soil thereof in the promoters do not entitle the petitioners to claim compensation in respect of apprehended loss of water rates, and they have no right to be heard against the bill on that ground; (5) the petitioners do not allege any ground in their petition, nor have they any interest, which entitles them to be heard on their petition against any of the provisions of the bill.

Bayjallay (for petitioners): The deposited plans and sections show an interference with mains and pipes belonging to the petitioners, and the bill contains no protective clauses in their favour. The petition alleges that it is of the utmost importance that the present and future supply of water by the petitioners to their district should not be obstructed. In cases of tramway bills, petitioning water companies have both been allowed and refused a *locus standi* for the protection of their mains and pipes, but where their *locus standi* has been refused it has been on account of the protection afforded them by the Tramways Act, 1870. The protection afforded by the Railways Clauses Act, 1845, is not nearly so ample. In the *Glasgow and Ibrox Tramway Bill* (2 Clifford & Rickards, 12), it was conceded that the petitioners were entitled to be heard in respect of apprehended interference with their gas and water pipes. We also claim to be heard on account of the deprivation of water rates which will result from the stopping up of North Kent-terrace and the vesting of the site and soil in the promoters.

Worsley Taylor (for promoters): As to the first point taken on behalf of the petitioners, ample protection is afforded them by the Railways Clauses Act, 1845; and as to the second point, the houses in North Kent-terrace already belong to us, so that we could at the present time take away from the water company the income derived therefrom if we chose.

The CHAIRMAN: We do not think the petitioners have made out a sufficient case to entitle them to a *locus standi*; we think that they are sufficiently protected by the clauses of the Railways Clauses Act, 1845.

Locus Standi of Petitioners, Disallowed.

Agent for Petitioners, *Hooker*.

Agent for Bill, *Cooper*.

SOUTH-EASTERN RAILWAY (VARIOUS POWERS) BILL.

Petition of (1) THE LONDON, CHATHAM AND DOVER RAILWAY COMPANY.

20th April, 1882.—(Before Mr. HINDE-PALMER, M.P., Chairman; Sir JOHN DUCKWORTH; and Sir F. S. REILLY.)

Railway Companies as Owners of Piers and Steamboats—Conservancy Board—Representation of Railway Company upon—Alteration in Constitution of Board—Opposition to, by Competing Railway Company—Continental Traffic, facilities for—Agreement as to, Alleged Evasion of—Competition—Improvement of Existing—Lands nominally Scheduled for Purposes of Railway Station—How far consistent with Fact.

Two railway companies were respectively owners of piers and steamboats, by means of which they carried on a competition with one another for goods traffic between the river Medway and continental ports on the opposite coast. The river Medway was placed under a conservancy board by an Act of 1880; and the present bill, promoted by one of the competing railway companies, provided for the addition to the conservancy board of two members, its own nominees. The petitioning company claimed to be heard against this portion of the bill, on the ground that it would have the effect of introducing upon the board two votes hostile to their interests as competitors, and urged in argument that, having obtained a *locus standi* against the Medway Conservancy Act, 1880, providing for the constitution of the board, they were also entitled to be heard against any alteration in that constitution. The petitioners also claimed to be heard against the acquisition of certain land (not, however, belonging to themselves) by the promoters, which, although nominally for the purpose of a station, was, they contended, really intended for a railway extension in competition with themselves. The third ground of *locus standi* advanced by the petitioners was that the bill involved an evasion of an agreement entered into between them.

ves and the promoters for the division profits upon certain continental traffic:

hat the petitioners were, under the circumstances stated in argument, entitled to

heard only against so much of the bill affected the existing constitution of the Medway conservancy board.

locus standi of petitioners (1) was denied to, because (1) the petition does not show that the fact that any land or property or right or interest of the petitioners will be taken or affected under the powers of the bill; (2) so far as the objections of the petitioners relate to powers sought by the bill (clause 36) to appoint two persons to be conservators of the river Medway, the petitioners have no objection, but the right of petitioning rests with the conservators appointed by the Medway Conservancy Act, 1880; (3) so far as the objections of the petitioners relate to the taking of land or property belonging, or reputed to belong, to the corporation of Rochester and the petitioners have no interest, but the right of petitioning rests with the parties whose property is proposed to be taken or interfered with; (4) the agreement referred to in the petition will not, nor will the rights or *status* of the petitioners thereunder, be so varied or altered by or under the bill, or by or under any agreement authorised thereby, as to entitle the petitioners to be heard against the bill; (5) no such competition would result from the arrangements proposed to be authorised by the bill; (6) no such competition would result from the arrangements proposed to be authorised by the bill; (7) the petition does not show that the petitioners have any such interest in the objects and provisions of the bill as entitles them to be heard against it.

, Q.C. (for petitioners): The bill encroaches upon our rights in many respects.

32 of the bill empowers the promoters to appoint two nominees of their own as members of the board of conservators of the river Medway, which is a representative body nominated on behalf of various interests, and was established by the Medway Conservancy Act, 1880. Against that bill the London, Chatham and Dover company were heard, after argument by Messrs Clifford and Rickards, 289, and it was held that as we were heard against the

constitution of the conservancy board we are equally entitled to be heard against the bill, which proposes an alteration in its constitution, giving undue predominance at the board to an interest hostile to our own. At any rate, we are entitled to go before the Committee to ask that a similar representation on the board should be granted to us in virtue of our ownership of the pier and works at Queenborough.

The CHAIRMAN: Do the conservancy board petition against the bill?

Worsley Taylor (for promoters): Yes; and their *locus standi* is admitted.

Pope: Our next ground of *locus standi* is that the promoters take power under the bill to acquire a large area of land, nominally for the purpose of enlarging their station and siding accommodation. The land in question far exceeds in amount what is necessary for that purpose, and it is obvious that the land can only be wanted in order to enable the company to extend, for about 300 yards towards the centre of the town of Rochester, the Rochester branch railway, which they were authorised to construct last session. This is a covert way of attempting to do what Parliament refused them on that occasion, viz., the power to go further towards the town of Chatham, and the result will be that they will be able to enter into a competition with the petitioners' railway, which, when openly asked for last session, was refused by Parliament. We also claim to be heard against clause 36 of the bill, enabling them to make and carry into effect agreements with the governments of the King of the Belgians and the King of the Netherlands for constructing piers, landing places, and other works at any port in either of those kingdoms, and the establishment of facilities of all kinds for interchanging traffic between such port and the promoters' undertaking in England. Such agreements are, we allege, in violation of an agreement made between us and the promoters on 7th September, 1865, as to continental traffic. That agreement extended to "traffic in connection with the lines of either of the companies, viz. Dover, Folkestone and all other places between Margate and Hastings, both inclusive, to and from Calais and Boulogne, and all other places on the opposite coast of the continent," the receipts from which were to be divided in certain proportions between the two companies. The agreements which the promoters seek to be empowered to enter into by the bill are an attempt to escape from the agreement of 7th September, 1865, and we are entitled to be heard against the bill upon that ground. At any rate, it is so

doubtful whether the bill does not authorise an evasion of that agreement that we ought to be heard to protect our rights.

Worsley Taylor (in reply): With regard to the continental traffic agreement, that agreement proceeded upon the recital that it was with the view of preventing undue competition, and it does not prohibit fair competition for continental traffic. The agreement will still exist, and is not interfered with in any way by the bill, the traffic promoted by the bill being outside that agreement. The Queenboro' steamers have been started by the London, Chatham and Dover company, since the agreement of 1865, and we have had no share in the profits, which are also outside the scope of the agreement. In the same manner the arrangements proposed by the bill are outside the agreement, and the petitioners can have nothing to say to them. With regard to their claim to be heard against the powers contained in the bill for taking land, the land to be taken is not their land, and even if taken for the purposes of constructing works, those works would only be an improvement of existing competition, and would confer no rights of *locus standi* upon the petitioners. As to the question of the promoters nominating two members of the Medway conservancy board, the Medway Conservancy Act, 1880, against which the petitioners were heard, interfered with their rights and property in more ways than by constituting a conservancy board for the Medway. The bill does not in any way alter the powers of the conservators. The two votes added to the board by the bill will only be two out of seventeen.

The CHAIRMAN: The petitioners complain that the bill will add two votes to the board hostile to their interests, and they say that they ought to go before the Committee to ask that they also should send representatives to the board if the promoters are allowed to do so. We think that the *locus standi* of the Petitioners should be *Disallowed*, except as to clause 32, that is, the clause relating to the Medway Conservancy Board.

Agents for Petitioners, *Martin & Leslie*.

[Upon the hearing of this case Mr. PEMBERTON, M.P., took the chair.]

Petition of (2) THE VESTRY OF ST. MARTIN'S, IN THE-FIELDS.

Railway Works—Local Authority—Roads and Sewers interfered with—Stopping up of Street—Vesting of Soil in Promoters—Acquisition

of Lands for Purposes of Works—Diminution of Rates—Absence of Clause for making good deficiency during Construction of Works—Provision in previous Act as to Forecourt to Railway Station, Repeal of—Forecourt, the Property of Railway Company—Commissioners of Woods and Forests as Arbitrators—Metropolitan Board of Works.

The bill provided for the construction of various works in connection with the railway of the promoters, and, *inter alia*, empowered the promoters to stop up a street, the soil of which was ultimately to vest in them, in a parish of which the petitioning vestry were the local authority. The petitioners claimed to be heard generally (1) upon this ground, a limited *locus standi* being conceded to them on its appearing that the street in question was under their control. They also claimed (2) to be heard on the ground that through the acquisition by the company of lands now covered by houses, the rateable area of the parish would be decreased, and the rates proportionately diminished, while the bill did not provide for making good any such deficiency. As a third ground of *locus standi* the petitioners complained of the repeal of a provision contained in a previous Act whereby the promoters were compelled when enlarging a railway station (as now proposed by the bill) to make a corresponding enlargement of an open space or forecourt in front of the station. It was, however, disputed that the provision sought to be repealed was inserted at the instance of the petitioners, and it appeared that the Commissioners of Woods and Forests were by that section appointed arbitrators to see that the provision was properly carried out, and further that the same question was being raised by other parties:

Held, that the petitioners were entitled to a limited *locus standi* on the question of interference with the street under their control, and as to the apprehended deficiency of rates resulting from the acquisition of lands in their parish by the promoters; but not as to the repeal of the provision in the

vious Act of the promoters for the largement of the forecourt.

locus standi of petitioners (2) was obtained, because (1) the petition does not show that any land, house, property, or interest of the petitioners, nor any public highway, local sewer or drain in the parish of St. Martin's-in-the-Fields, alleged to be under their management or control, will be taken or affected under the provisions of the bill, or in consequence of the operation thereof; (2) the paragraphs numbered 4 inclusive in the petition are merely declarative against the powers sought by the bill to increase the present Charing Cross accommodation in the manner proposed by the bill, but in these paragraphs the petitioners fail to allege or show that the powers by the bill would in any manner take, or interfere with, or injuriously affect any street, sewer or drain alleged to be under management or control, and the allegations made in those paragraphs, even if true, which the promoters deny, wholly fail to show any direct interest in the petitioners in the matters set forth, or referred to therein, as to entitle them to be heard against the bill; (3) as the objections of the petitioners relate to the taking of, or interference with, or the affecting of private property, rights, or interests, the petitioners have no interest or right to be heard, but the right of petitioning rests with the persons, whose property, rights or interests (if any) are proposed to be taken or interfered with and who have petitioned against the bill; (4) so far as the objections of the petitioners relate to the omission from the bill of a clause similar to section 96 of the Act of 1859, 22nd and 23rd Vict., cap. 81, the petitioners have no right to be heard upon that ground. Such right, if it belongs to the Commissioners of Her Majesty's Woods, Forests, and Land revenues, or their successors, and not to the petitioners; (5) the petitioners, if entitled to be heard at all, are not entitled to be heard for the purpose of opposing the roads, streets, public thoroughfares, sewers and drains, against such parts of the bill as may interfere with, and against such parts of the bill as relate thereto; (6) the transfer of the land to the promoters for the purposes of the bill will not exempt it from rateability, and will not give the petitioners a right to oppose the bill on that ground; (7) so far as the objections of the petitioners relate to the taking of or interference with private property, rights, or interests, the petitioners have no interest or right

to be heard, but the right of petitioning rests with the parties whose property, rights and interests are proposed to be taken or interfered with.

Michael, Q.C. (for petitioners): We ask for a *locus* upon three grounds. First, Clause 12 provides that "the company may stop up and discontinue the use for public and private traffic of Brewer's-lane, in the parish of St. Martin's-in-the-Fields, in the county of Middlesex, and thereupon the site and soil thereof shall, if the company are, or if and when they become, the owners of the land on both sides thereof, be vested in the company freed from all public and private rights and they may appropriate the same for the purposes of their undertaking." The soil of the street according to the decision in *Coverdale v. Charlton* (L.R. 4 Q.B.D. 104), is vested in us, so far as is necessary to support the roadway, and the sewers also. They propose to take Brewer's-lane, and that gives us an unlimited *locus standi* as owners.

Worsley Taylor (for promoters): If my learned friend says that the petitioners repair that street, and that it is not private property, I will accept his statement.

Michael: Yes, it is vested in us.

Worsley Taylor: Then I concede that the parish of St. Martin's-in-the-Fields have a *locus* in respect of that street, limited however to the clause that gives power to take that street, and so much of the preamble as relates thereto.

Michael: I am not content with that; I must therefore state my other objections. The second point is, that the promoters have not inserted in the bill the ordinary clause for making good the deficiency in the assessment by reason of lands being taken for the use of the railway.

Sir F. S. REILLY: The *locus standi* which is conceded you in respect of the taking of lands would cover the question of deficiency of assessment by reason of lands being taken.

Michael: Then I go to my third point, which is this:—By the 96th sec. of the 22nd and 23rd Vict., for making the Charing Cross railway, the company were bound to provide an area in front of the station of a width of 100 ft. between the station and the street, so that cabs going to and from the station should not impede the traffic of the Strand, and they were bound, in case they should hereafter acquire any more land, from time to time, to give a corresponding increase of width of open forecourt, and the work was to be done to the satisfaction of the Commissioners of Woods and Forests. Clause 23 of the present bill repeals that provision. It provides that, "So much of sec. 96 of the Charing Cross Railway Act, 1859, as provides that, in case the width of the company's Charing

Cross railway station or any works connected therewith, be at any time increased, the company shall, before making any such increase, from time to time, purchase and acquire such lands, houses and buildings as will enable them to make, and as requires the company to make, a corresponding increase in the width of the forecourt or area in front of the station to the depth of 100 ft. from the south-east side of the foot pavement therein before mentioned, is hereby repealed."

The CHAIRMAN: Has the street authority any control over this open space?

Michael: It would belong to the railway company, but they are bound to maintain the forecourt, and when they acquire any further property they are to continue the forecourt. Now they seek to release themselves from the obligation. That clause was put in at our instance for the benefit of the public, the Woods and Forests being inserted in the clause, as arbitrators, to see the work properly carried out, in the same way as a provision is sometimes inserted in bills that the work is to be done to the satisfaction of an engineer to be appointed by the Board of Trade.

Worsley Taylor (in reply): The petition does not allege that clause 96 was put in at the instance of the vestry of the parish of St. Martin's, or for their protection, or that they have any jurisdiction over the forecourt, which was to be made in the first instance, or which was to be added to from time to time. They merely set out clause 96. The work is to be done to the satisfaction of the Woods and Forests.

The CHAIRMAN: They were merely put in as arbitrators. They only stand in the same position as an engineer would have stood in if the clause had said that the works were to be done to his satisfaction.

Michael: The clause was inserted at our instance.

Worsley Taylor: If the works were not done properly the Woods and Forests would be the people to interfere, and the presumption is that the clause was inserted at their instance. The Metropolitan board of works are raising this very question as the guardians of the whole of the metropolis, and we are in communication with the Woods and Forests upon the matter at this moment.

Sir F. S. REILLY: There is nothing to show that the clause was inserted for the protection of the vestry.

The CHAIRMAN: With regard to the *locus standi* which is conceded to the parish of St. Martin's, to what extent does that go?

Worsley Taylor: We contend that they have a *locus standi* against the part of the clause by

which we propose to take land, that is to say, as gives us power to take Brewer's-lane, and so much of the preamble as relates thereto.

The CHAIRMAN: We think the *locus standi* should be allowed as to the taking of Brewer's-lane and as to the deficiency in the rating, but we think it should be disallowed as to the repeal of clause 96. The *locus standi* would be disallowed except as against clause 12 and clause 13, sub-section 6, and so much of the preamble as relates thereto.

Michael: How do the Court deal with the question of deficiency of rating?

The CHAIRMAN: That follows from the taking of the lands.

Worsley Taylor: Upon the rating question the petitioners only ask to be heard to insert a clause, so it would be only a clause opposition.

The CHAIRMAN: This is the form in which our decision will stand:

Locus standi Disallowed, except as against clause 12 (as to the stopping up of Brewer's-lane) and so much of the preamble as relates thereto, and against clause 13, sub-section 6, as to deficiency of rates, without saying anything about preamble.

Sir F. S. REILLY: On the last point the petitioners will be limited by their petition.

Michael: We shall be able to tell the Committee the decision of the Referees with respect to that; and shall have the opportunity of asking to have a clause inserted to make up the deficiency in rating.

Worsley Taylor: It must be understood that my learned friend is not to go into the general question.

Sir F. S. REILLY: He will necessarily be limited by the allegations in his petition; he will not be heard upon any other point.

Agents for Petitioners, *Dangerfield & Blythe*.

Petition of (3) THE SOUTHWARK AND VAUXHALL WATER COMPANY.

Baggallay, for the Southwark and Vauxhall Water Company, stated that the decision of the Referees on the petition of the company against the *South-Eastern Railway (New Lines and Widening)* Bill [*supra*, p. 217], would be accepted by them as applying to their case against the present bill.

Agent for Petitioners, *Hooker*.

Petition of (4) THE GREENWICH DISTRICT BOARD OF WORKS.

The petitioners, whose *locus standi* was objected to in the same terms as the objections

the vestries petitioning against the *South-eastern Railway (New Lines and Widenings) Bill* *supra*, p. 213], claimed a general *locus standi* in the grounds (*mutatis mutandis*) (1) and (2) advanced on behalf of the vestry of St. Martin's-the-Fields against this bill (*vide supra*). Upon argument, the Court allowed them a *locus standi* limited in the same manner.

Cripps appeared for the petitioners.

Worsley Taylor was heard on behalf of the promoters.

Agents for Petitioners, Dyson & Co.

Agent for Bill, Cooper.

SOUTH LONDON MARKET BILL.

Petition of THE VESTRY OF ST. MARY, NEWINGTON.

14 March, 1882.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE-PALMER, M.P.; Mr. PARKER, M.P.; Sir JOHN DUCKWORTH; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Establishment of Market—Vestry as Local and Road Authority—S. O. 134 (Municipal Authorities and Inhabitants of Towns)—Injurious affecting of District—Rates—Demolition of House Property—Reduction in Rateable Value of Land appropriated as site for Market—Roads—No interference with, but Apprehended Injury to.

The bill authorised the establishment of a market in a parish, of which the petitioners were the vestry. The petitioners claimed to be heard (1) as the local authority of a district injuriously affected by the bill under S. O. 134; (2) on the ground that by the demolition of house property, authorised by the bill, the rates would be decreased; (3) that, although no roads leading to the market were to be stopped up under the powers of the bill, the traffic to be anticipated along the roads forming approaches to the market would be so increased as to necessitate the construction of new roads, part of the expenses of which would fall upon the parish. The Court, although doubting the sufficiency of the allegations of the petitioners with regard to the first point, allowed their *locus standi* on that ground under S. O. 134.

The *locus standi* of the petitioners was objected to, because (1) they are not owners,

lessees, or occupiers of any of the lands or houses over which compulsory powers are sought by the bill; (2) the petitioners have not the care or management of any of the streets, roads, courts, yards, or passages, which are to be stopped up or interfered with under the provisions of the bill; (3) none of the streets, roads, or public thoroughfares in the parish under the care or control of the petitioners will be interfered with under any of the provisions of the bill; (4) the allegation that the petitioners will be deprived of local and other rates is not a ground on which, according to the practice of Parliament, the petitioners are entitled to be heard; (5) they do not allege or disclose any grounds upon which, according to practice, they are entitled to be heard.

Ledgard (for petitioners): The bill is "for the establishment and regulation of a market in South London (near the Elephant and Castle Tavern), in the parish of St. Mary, Newington," of which parish the petitioners are the vestry, and as such the local and road authority. The petition alleges that the interests of the parish, and of the inhabitants thereof, will be injuriously affected by the bill, and the petitioners claim to be heard under S. O. 134. We allege that both the construction of the market, and the rules for its regulation are badly devised and insufficient. Another ground for our *locus standi* against the bill is that the market is proposed to be constructed on a plot of land 100 yards square, the existing houses upon which are to be pulled down for the purpose, and we shall consequently be deprived of local and other rates. Then again, as the road authority, we anticipate that the existing roads leading to the site of the proposed market will become so blocked as to compel us to make new roads, the expense of which will be borne, half by the Metropolitan Board of Works, and half by ourselves. [*St. Helen's Borough Improvement Bill*, 1 Clifford & Stephens, 52; and *Metropolitan and Metropolitan District Railway Companies Bill*, on *Petition of Trustees and Vestry of the Parish of St. Mary's, Whitechapel*, 2 Clifford & Rickards, 190, cited in support; *Midland Railway (Additional Powers) Bill*, 2 Clifford & Stephens, 39; and *Cheshire Lines Committee Bill*, on *Petition of Toxteth Park Local Board*, 3 Clifford & Rickards, 29, distinguished.]

Batten (for promoters): The property proposed to be pulled down in order to erect the market belongs almost exclusively to one owner, and except for making arrangements with the railway companies, no Act of Parliament would have been required to convert it into a market, theatre, circus, or any other building. No interference with any street leading to the market

is authorised by the bill. As to the reduction in rates apprehended by the petitioners, the rates from the market will be more than those from the existing houses. It is not like the case of pulling down houses to construct a park or recreation ground, where the vestry would lose their rates. The argument that the rates will be decreased is inconsistent with the suggestion that the streets leading to the market will become inconveniently crowded with traffic. As a matter of fact, the parish must be benefited by the construction of such a work, and the vestry are not entitled to be heard under S. O. 134.

The CHAIRMAN: In this case if the petition had been more expressly directed to the injuries which the petitioners think would probably arise, we should without hesitation have allowed their *locus standi*; that being so, we are not inclined to pick holes in it, and taking it altogether, we think perhaps a sufficient allegation on the first point of Mr. Ledgard's argument may be gathered from the petition, and therefore we Allow the Petitioners a *locus standi* under S. O. 134.

Agent for Bill, *Batten*.

Agents for Petitioners, *Simson, Wakeford & Co.*

SOUTH LONDON TRAMWAYS BILL.

Petition of LONDON AND SOUTH-WESTERN RAILWAY COMPANY.

1st May, 1882.—(Before Mr. PEMBERTON, M.P. Chairman; Mr. PARKER, M.P.; Sir JOHN DUCKWORTH; and Sir F. S. REILLY.)

Railway Company petitioning as Frontagers, against Tramway Bill—Physical Interference, with Railway by Tramways—Level Crossings of Railway crossed by Tramway Lines—Tramways, Obstruction to Railway Traffic by—Tramways, Policy of Constructing Portions of, raised by Railway Company.—S. O. 135 (Petitions against Tramway Bills).

Certain tramways were proposed to be constructed in South London, running parallel to portions of the London and South-Western railway and opposite to some of that company's stations and premises. Two of the tramways would also cross on the level some level crossings of the railway company in Nine Elms-lane. The railway company petitioned as frontagers, and on the ground of physical interference with their level crossings, raising also various questions of com-

petition, obstruction to their traffic, and considerations of public convenience and safety:

Held, that the petitioners were entitled to be heard as frontagers, and also against so much of the works clause as would sanction the crossing of their level crossings, and that they would be entitled to raise before the Committee the issue not only as to the mode of crossing but as to the policy of allowing those portions of the tramway lines in Nine Elms-lane to be constructed.

The *locus standi* of the London and South-Western railway company was objected to because (1) no lands, &c., of theirs will be taken or interfered with; (2) the proposed tramways will not injuriously affect them in the use or enjoyment of their premises or in the conduct of their trade or business; (3 and 4) the petitioners do not represent the public or the road authority, and are not entitled to be heard on allegations of inconvenience or danger to the public that might arise from the construction or extension of the proposed tramways; (5 and 6) the petitioners are not entitled to be heard on the ground of competition, and allege no interests entitling them to be heard according to practice.

Clerk, Q.C. (for South-Western railway company): The proposed tramways commence in the Wandsworth-road by a junction with the authorised tramway of the company near the Wandsworth-road station of the Chatham and Dover railway, and terminate at Vauxhall-cross by a junction with the tramway company's lines authorised by their Act of 1881. For the whole of the distance the tramway will run parallel to and within a short distance of the South-Western railway; and it will pass for a considerable distance along the Wandsworth-road, opposite the private station of Her Majesty and opposite two important entrances to the goods yards and other entrances to our principal stores and mechanical engineering works. The width of the road at these points is only 27 feet, or thereabouts, and the space which would be left for ordinary road traffic after the construction of the tramways would be unsafe for so important a thoroughfare. Our goods station and other premises in the Wandsworth-road are of great extent, and the road traffic at those points is very considerable; and as the proposed tramways will cross every exit from or entrance to our goods station, much inconvenience and some danger to the traffic and to the public will result, especially as the traffic to our goods station is of a very heavy nature, the railway and other vans

construction and often drawn by horses. Equal obstruction to the arise from the construction of the front of our Vauxhall station. In Nine Elms-lane we have, within a district, three sets of level crossings, together of seven lines of railway across all goods and mineral traffic in the street. Our extensive wharves on the north side of the main entrances to our stone and straw yards, as well as our warehouses, grain, seed, wool and other warehouses, are also situated in Nine Elms-lane and the traffic to and from these is incessant. Yet it is proposed by the bill that some of their tramways shall cross in Nine Elms-lane on the level, and midway there is only of the average width of 28 feet, so that on the side of the tramways and cars there would be a clearance of no more than 10 ft. 6 in. The street is even now barely sufficient for the existing traffic, and at the points where the railway crosses it on the level there has to be taken night and day precautions specially appointed for the purpose.

We do not raise the question of the *locus standi* but we claim a *locus standi* as under S. O. 135 in respect of our petitioners. (*Brentford, Isleworth and Uxbridge Tramways Bill*, 2 Clifford & Rickards, *Tramways Bill*, *Ib.* 210.) Of course we claim a *locus standi* in respect of our lines in Nine Elms-lane.

The CHAIRMAN: (for promoters): If the petitioners have drawn as a frontagers' petition and have contested the *locus standi* of the railway company; but they raise questions of the policy of public safety upon which the right to be heard.

There is a physical interference with the use of Nine Elms-lane; and, as we have seen in the petition, the promoters in 1879 intended to lay a similar line of tramway but the bill was thrown out as a portion of their scheme, and they intended to terminate their tramways at a point distant from our level crossings to avoid the inconvenience and danger to traffic and that of the railway company were heard against the bill as the case level crossings.

We concede you a *locus standi* in respect of our tramways as affect your petitioners, but you must not have a general *locus standi*. (*Tramways Orders No. 3, &c., Bill*, *Petition of the Tramways Company*, 3 Clifford & Rickards, *Ib.* 210.) Following the precedent just

quoted, the railway company would have the right to be heard as frontagers against such of the tramways as pass in front of their premises, and also against so much of the works clause in our bill as authorises the crossing of their lines of railway in Nine Elms-lane.

Clerk: The question here is a good deal larger than it was in the case cited. That was merely the crossing of one tramway by another, and therefore the petitioners' *locus standi* was confined to the mode of crossing. Here the issue is the policy of allowing tramways to be laid down at all in this narrow lane in which our level crossings are.

The CHAIRMAN: If you get a *locus standi* against that particular part of the tramway bill which authorises the crossing of your lines of railway, you will be able to argue the whole question as to those portions of tramways.

Saunders: That is my intention; that is to say, the *locus standi* should not be limited merely to the mode in which the level crossings of the railway company should be crossed by our tramways, but it should be open to the railway company to raise the question of the policy of allowing those tramways to cross the lines of railway at all.

Locus Standi Disallowed, except such as is given under S. O. 135 (as frontagers) against tramways Nos. 9, 10, 11, 12, 19 and 20; and also against so much of clause 4 (the works clause) as authorises a crossing of the petitioners' lines of railway in Nine Elms-lane by the proposed tramways Nos. 19 and 20.

Agents for Petitioners, *Bircham & Co.*

Agents for Bill, *Wilkins, Blyth & Co.*

SOUTHPORT AND CHESHIRE LINES EXTENSION RAILWAY BILL.

Petition of (1) THE LANCASHIRE AND YORKSHIRE RAILWAY COMPANY.

Railways—Competition—Extension of Authorised Line into Adjoining Township—New Terminus—Improvement of Existing Competition—S. O. 130 (Competition).

The promoters had obtained the consent of Parliament in the previous session to the construction of a railway from Liverpool to Birkdale, where it had been stopped on the opposition of certain landowners, and they now asked for powers to extend their

authorised railway for the remainder of the distance originally contemplated, viz., into Southport. The petitioners were owners of competing railways between Liverpool and Southport, and had obtained a *locus standi* against the bill of the previous session. They claimed to be heard against the proposed extension of the promoters' railway on the ground of competition. It was shown, however, that Birkdale and Southport were practically one place, that the terminus of the proposed extension would only be three-quarters of a mile nearer the centre of the watering-place formed by the two townships, and that the same traffic would be carried to the proposed as to the authorised terminus: *Held*, upon this state of facts, that there was no such new competition created by the bill as entitled the petitioners to be heard against it.

The *locus standi* of the petitioners was objected to, because (1) the petition does not allege or show, nor is it the fact, that any land, property or right of the petitioners will be taken or interfered with under the powers of the bill; (2) the petition does not allege or show that the bill contains provisions for taking or using any part of the lands, railway stations, or accommodations of the petitioners, or for running engines or carriages upon or across the same, or for granting other facilities affecting the petitioners, or for making traffic or other arrangements with them; (3) the railways described in the bill will not cause any competition with the railways of the petitioners within the meaning of S. O. 130; (4) the bill contains no provision affecting the petitioners; (5) the petition does not allege or show that the petitioners have, nor have they, such an interest in the objects and provisions of the bill as entitles them to be heard against the bill.

Ledgard (for petitioners): We ask to be heard on the ground of competition. The bill is for the extension of the promoters' authorised line from Birkdale to Southport. The promoters last year came to Parliament for powers to construct the same railway as is now proposed to be extended to Southport, the whole way between Liverpool and Southport, but upon the opposition of owners of property along the foreshore between Birkdale and Southport, Parliament decided to stop the line at Birkdale. As owners of railways between Liverpool and Southport, we were heard against that bill on the ground of competition.

Saunders, Q.C. (for promoters): Your land was taken.

Ledgard: But we had an undoubted right to be heard upon the ground of competition. Birkdale and Southport are about a mile apart, but it is a great object to the promoters to carry their line into Southport for the sake of excursionists from Liverpool to the winter gardens, &c., at Southport. That being so, the traffic to be accommodated by the extension proposed by the bill is of a sufficiently distinct character to form a new element of competition between the two railway companies, and not merely an improvement of existing competition. This case is within the principle laid down in the *London and North-Western Railway Bill* (1 Clifford & Stephens, 109).

Saunders, Q.C. (in reply): Southport and Birkdale adjoin one another, are conterminous, with buildings extending continuously from one to the other, and are practically one town. Precisely the same traffic will be served by our authorised line of last year from Liverpool to Birkdale, but the bill will provide us with a more conveniently situated terminus, three-quarters of a mile nearer the centre of the watering-place formed jointly of Birkdale and Southport, than the present authorised station at Birkdale.

The CHAIRMAN: We think we need not trouble you further. The *locus standi* of the Petitioners must be *Disallowed*.

Agents for Petitioners, *Sherwood & Co.*

Petition of (2) OWNERS, LESSEES AND OCCUPIERS
OF PROPERTY AT SOUTHPORT AND BIRKDALE.

*Construction of Railway along Seashore—
Owners, &c., of Property Abutting upon Sea-
shore—Frontagers—Loss of Access to Shore—
Injurious Affecting—Lands Clauses Consoli-
dation Act, 1845—Interference with Roads.*

The bill authorised the construction of a portion of railway along the seashore, so as to intervene between the property of the petitioners and the sea. The petitioners were in most cases owners or occupiers of villas whose gardens extended to the shore with gates opening upon it, but in a few instances their property was situated in a street at right angles to the shore. No property of the petitioners was sought to be compulsorily taken under the powers of

the bill, but the petitioners alleged injurious affecting by loss of access to the foreshore :

old, that in the case of petitioners, who were frontagers upon the railway proposed to be constructed along the foreshore, this was sufficient to constitute a ground of *locus standi*.

The *locus standi* of the petitioners was objected to, because (1) the petition does not allege or show, nor is it the fact, that any land, property, or right of the petitioners will or can be taken or interfered with under the powers of the bill; (2) the petitioners do not represent a class, and are not entitled to be heard against a bill either as representing the class of persons to which they belong or as individuals; (3) the promoters deny that any of the provisions of the bill will or can affect the property, rights and interests of the petitioners; (4) the matters set forth in the petition are not such as, according to the principles and practice of Parliament, can be properly raised before the committee to whom the bill may be referred; (5) the petition does not allege or show that the petitioners have, and they have not, in fact any such interests in the objects and provisions of the bill as entitles them to be heard against the same.

Pember, Q.C. (for petitioners): The petitioners are owners or occupiers of villas situated along the shore between Birkdale and Southport, some of them being in one township and some in the other. In almost all cases the houses of the petitioners look directly upon the sea, and have access by means of garden gates to the seashore. In the other cases the petitioners are owners or occupiers of property in a street called Duke-street, which runs at right angles to the shore, and the effect of the bill will be to interfere with the road at present leading to the shore, and at one point to interpose a railway station and works between the petitioners and the shore. In no cases is the land of the petitioners scheduled for the purposes of the bill, and they therefore have no right to claim compensation for consequential injury to their property under the Lands Clauses Consolidation Act, 1845. The petitioners opposed the bill brought in by the promoters last year for carrying their railway along this same foreshore between the petitioners and the sea, and although they omitted to lodge a petition against the bill in the House of Commons, their *locus standi* was granted after argument in the House of Lords.

Saunders, Q.C. (for promoters): In the case of two of the petitioners last year, their land was scheduled by the bill.

Pember: But a *locus standi* was granted to the other petitioners whose property was not taken. The bill proposes this year to make the railway a little further seaward from the backs of the petitioners' houses, and to convert the intervening space into a public garden, which we regard as equally injurious to us. The present bill, besides authorising an interruption of our sea view, possesses the same objectionable character as the bill of last year, inasmuch as it completely cuts off our free access to the foreshore, upon which the value of our property so largely depends.

Saunders, Q.C. (in reply): Besides the fact that last year compulsory powers were taken over some of the petitioners' property, the plan for the construction of the railway was of a far more objectionable character than that of the present scheme. The bill of last year proposed that the railway should run close alongside of the garden walls of the petitioners, whereas the present bill proposes to carry the railway much farther seawards. With regard to any interference with roads, as in the case of Duke-street, that is a matter for the road authority. The fronts of the petitioners' houses are away from the sea, and in many cases they can only get a sea view from the upper windows at the back of their houses.

The CHAIRMAN: I understand that some of the petitioners only are frontagers on the proposed line of railway?

Saunders: Some are merely owners or occupiers of houses in a street at right angles to the sea.

The CHAIRMAN: We think all those petitioners who are frontagers are entitled to a *locus standi*.

Locus standi of owners, lessees, and occupiers of property at Southport and Birkdale Disallowed, except of those petitioners whose property lies between Well-road and Duke-street, and between Westcliffe-road and Lord-street on the one side, and the beach on the other.

Agents for Petitioners, Sherwood & Co.

Agent for Bill, Bell.

SUTTON AND LONDON AND SOUTH-WESTERN JUNCTION RAILWAY BILL.

Petition of the LONDON, BRIGHTON AND SOUTH-COAST RAILWAY COMPANY.

23rd March, 1882.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE-PALMER, M.P.; Mr. PARKER, M.P.; Mr. RICKARDS; and Mr. BONHAM-CARTER.)

Railways — Competition — Through and Local Lines — Third Company — Junction with — Power to enter into Working Agreements with — Different Termini in Metropolis — Same Traffic Served.

The bill authorised the construction of a railway between Sutton and the Worcester-park station of the London and South-Western railway company, with power to the promoters to enter into working and other agreements with the London and South-Western company. The petitioners were owners of a railway between Sutton and London, and petitioned against the bill on the ground that it would, by the arrangement authorised with the London and South-Western company, form a competitive route with their own railway. It was urged in reply, on behalf of the promoters, that the London termini of the London and South-Western and the London and Brighton companies being at a considerable distance from each other, no competition could arise under the bill; and also that, regarded as a railway in connection with that of the London and South-Western, the proposed line would only improve the competition already existing between the railways of the promoters and the petitioners:

Held, however, that the bill would place the promoters in such a position as to enable them to carry on a fresh competition with the petitioners for the same traffic, and *locus standi* of the petitioners accordingly allowed.

The *locus standi* of the petitioners was objected to, because (1) the petitioners are not owners of, or otherwise interested in any land or property sought to be acquired for the purposes of the intended railways, or otherwise

affected by the bill; (2) the railways proposed to be authorised by the bill will not form a junction with, nor otherwise interfere with the railway belonging to the petitioners, neither will they compete with them for any traffic which the petitioners now carry, inasmuch as the petitioners' railway is from Sutton to London-bridge and Victoria, whereas the proposed undertaking is from Sutton to the Worcester-park station of the London and South-Western railway about eleven miles distant from London-bridge, and nine miles from Victoria; (3) the bill does not empower the company to be incorporated to run over, work, or use any portion of the London and South-Western railway between Worcester-park station and the London terminus of that railway, and consequently the powers of the company to be incorporated cease at Worcester-park station; (4) even if the proposed line were worked by the London and South-Western railway company as provided for by the bill, it would not compete with the petitioners' railway, as the London and South-Western railway company have no station either at London-bridge or Victoria; (5) the plea of competition set up by the petitioners has no foundation in fact, neither do the petitioners allege any valid ground in their petition, nor have they any rights or interests which entitle them to be heard on their petition against any of the provisions of the bill consistently with the customary rules and practice of Parliament.

Saunders, Q.C. (for petitioners): We ask to be heard on the ground of competition. The line, powers to make which are taken by the bill, is a line three miles in length, commencing at Sutton and running to the Worcester-park station of the London and South-Western. Powers are taken in the bill to enter into agreements with the London and South-Western for the working, use, management, and maintenance of the railway. The London and Brighton company have a line from Sutton, *via* Croydon, to London-bridge and Victoria and another line from Sutton, *via* Mitcham to London-bridge and Victoria, and they have convenient services of trains by both routes. They also have a line from Sutton, *via* Mitcham to Wimbledon, where they exchange with the London and South-Western, so that this line would also set up a minor competition with them as between Sutton and Wimbledon. Then they carry passengers to Kensington over the West London Extension, which is owned by them jointly with the London and South-Western, so that they have three points in London to which they take people, *viz.*, Kensington, Victoria, and London-bridge. As regards Kensington they would be in direct competition with the London and South-Western

o, because both companies go to
ben the proposed line, if worked
with the London and South-
take passengers to Waterloo,
ould get to Cannon-street by
ion, and by recent arrangements
made they would be able to go
on and London railway to South
l stations of the Metropolitan

promoters): There is no com-
entitling the petitioners to be
g this had been an extension of
South-Western from Worcester-
brought forward by the London
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have had no *locus standi*, be-
d only have been a development
petition. To entitle petitioners
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ordon and Brighton have *termini*
ge and Victoria. The London
estern have a terminus at
owhere near the city.

N: But passengers can get on
o Cannon-street.

y by walking a long way from
and exchanging into the trains
stern. Taking Victoria station,
mpetition between this line in
the London and South-Western
and Brighton to Victoria?

r: Mr. Saunders puts it as com-
a Sutton and London.

ubmit that you will not give a
n that extended ground. The
ot allege that competition will
is line of three miles itself, but it
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manner inconsistent with ar-
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t, I presume, relates to arrange-
tion to Kensington.

r: The petition alleges that the
y establishes and is devised for
e of establishing a competing
veyance of traffic to and from
n or Sutton and the neighbour-

doubt there is that general

r: At present there is no com-
the London and Brighton and
nd South-Western for Sutton

Ledgard: There is competition to this extent,
that a man at Sutton can walk from Sutton the
length of our line to the South-Western at
Worcester-park.

Mr. BONHAM-CARTER: That would be three
miles.

Ledgard: These two systems, the London
and Brighton and the London and South-Western,
serve two different localities, and go to different
termini, and I submit that the competition here
is so remote as not to entitle the petitioners to
a *locus standi*.

The CHAIRMAN: We think the petitioners
are entitled to be heard upon the ground of
competition.

Locus standi Allowed.

Agents for Bill, Hanly & Fellows.

Agents for Petitioners, Dyson & Co.

SWINDON, MARLBOROUGH AND ANDOVER RAILWAY BILL.

Petitions of (1) SOUTHAMPTON HARBOUR BOARD;
(2) CORPORATION OF SOUTHAMPTON; (3)
SOUTHAMPTON DOCK COMPANY.)

27th March, 1882.—(Before Mr. PEMBERTON,
M.P., Chairman; Mr. HINDE-PALMER, M.P.;
Mr. PARKER, M.P.; Mr. MELDON, M.P.; Mr.
RICKARDS; and Mr. BONHAM-CARTER.)

*Railway, Terminating on Foreshore, but with-
out Dock or Pier—Rival Interests—Harbour
Board—Corporation—Dock Company—Appre-
hended Diversion of Traffic—Competition,
Actual or Future—Proper Time to Resist—River
Conservancy, Works Affecting—Interference
with Roads and Rivers—How regarded by Court.*

Against a bill promoted by a railway company
for constructing a branch line out of the
parent system near the town and harbour
of Southampton, and extending to a point on
the foreshore some miles below Southampton
known as Stonepoint, three petitions were
presented, viz., by the harbour board,
corporation, and dock company of South-
ampton, respectively. All three sets of
petitioners complained of the competi-
tion which they foresaw as an inevitable
consequence of the grant of these powers,
though no dock or pier was authorised or
mentioned in the bill:

Held, that their proper time to object would
be when it was proposed by further

legislation to authorise such an addition to the railway, and not at the present stage.

The harbour board further claimed a hearing on the ground that a distinct spur or branch of the new railway would cross the river Test within their jurisdiction as the conservators of Southampton Water:

Held, that they were entitled to a *locus standi*, limited to the works clause.

(*Per Cur.*) Where a bridge is proposed to cross a river we always allow the conservators to appear, in the same way that we allow the road authority to be heard against any works that might interfere with a road.

The *locus standi* of the Southampton harbour board was objected to, because (1) no rights, property, &c., of theirs were taken or interfered with; (2) the petition did not show how they would be prejudiced by the construction of the proposed railways or any provisions of the bill; (3) the railways would cross the river Test above the point where it was navigable, and beyond the jurisdiction of the harbour board; (4) the several Acts of Parliament referred to in the petition were not proposed to be altered or repealed; (5) the allegations of apprehended injury from the construction of piers, landing stages, docks, or other similar works were not applicable to the bill, no such works being authorised thereby; (6) and (7) no sufficient grounds for a hearing existed or were shown according to precedent or practice.

The *locus standi* of petitioners (2) and (3), the Southampton corporation and dock company, was objected to on similar grounds.

Ledgard (for (1) the harbour board): The bill authorises the Swindon, Marlborough and Andover company to construct two additional lines of railway, one commencing in the parish of Eling by a junction with the South-Western railway, and terminating on the foreshore at Stonepoint; the other being a line across the river Test, within our jurisdiction, and with respect to which we have an undoubted *locus standi*. We are the conservators of the Southampton water, and our jurisdiction extends to Redbridge (which is higher up the river Test than the proposed point of crossing), and the bill confers on the company powers to acquire by compulsion, or interfere with, portions of the rivers, lands, and water over which we thus have rights. We further say in our petition: "Your petitioners cannot believe that the construction of a railway to Stonepoint is the real design of the company, and they are apprehensive that, if the construction of such railway is authorised, the company will necessarily, in order to give any value to this part of their undertaking, apply for further powers to enable them to construct piers, landing-stages, docks, and other similar works at Stonepoint for the accommodation of passengers and goods, and the reception of shipping. Your petitioners would thus be subjected to an entirely new competition in respect of traffic which now passes up and down Southampton water to your petitioners' piers, quays, and works, and such competition will lead to the abstraction of their dues and the reduction of their income, and your petitioners would thereby be most seriously and prejudicially affected. Your petitioners are acting as guardians of the public interests in connection with the port and harbour of Southampton, and they derive no personal advantage whatever from their position, and all their net revenues are required to be, and are, in fact, expended for the public benefit, and they object to the construction of the said railway in the interests of the port and harbour of Southampton. Moreover, your petitioners' works have been constructed by means of money borrowed on the security of the said revenues, and a very large portion of the money so borrowed is still outstanding. Your petitioners submit that no case of public necessity can be made out for the intended railway as a local line, inasmuch as it passes for nearly its entire length through a portion of the New Forest, which is but thinly inhabited. As regards any other object with which it may have been designed in connection with traffic by sea to and from the Isle of Wight or other places, your petitioners contend that the accommodation now afforded by your petitioners and others at Southampton (which your petitioners are obtaining powers in the present session to extend) is ample for the needs of all such traffic, and, as appears by the Act by which your petitioners' pier was authorised, the same was in fact constructed for the accommodation of such traffic." We say that this scheme is not what it purports to be, but that it is a lever to introduce in some other session a bill for further powers to enable the promoters to compete with us very injuriously. It may be, strictly speaking, that a mere apprehension of future injury is not a ground for a *locus standi*; but this can hardly be the case where people have reasonable grounds for apprehending injury, and at no distant date.

Mr. RICKARDS: You seem to apprehend that another bill is coming to confer powers that will be injurious to you?

Ledgard: Whether by a bill deposited this

r not, it is perfectly well known that the object. Even with regard to the bill, we cannot tell, until we come to the Committee, what these "approaches, sidings, and conveniences" may mean in relation to a railway avowedly terminating on the shore.

CHAIRMAN: Those words cannot cover wharves, and piers?

Ledgard: They would certainly cover a wharve such as the South-Western company have already got at Stokes Bay.

MR. LICKARDS: These words in clause 4 are ordinary words always used in railway bills?

Ledgard: The object of this bill is to make a pier to Stonepoint, with a view of providing water communication there by ferries to the Isle of Wight; this being a pier it would in all probability be a free place, and the company would be able to remove from us the tolls we are entitled to in respect of our pier in Southampton.

CHAIRMAN: Do they take power by this to make a pier?

Ledgard: No, but they can get from the Trade power to make a free landing without a Provisional Order or bill, and so prevent us from being heard against it.

MR. LICKARDS: In order to entitle you to a pier you must show that the works to be constructed may injuriously affect you.

Ledgard: It would be injurious to us if they constructed a railway terminating at the shore at the point in question. I do not know until I come before the Committee what they are going to do at the termination of No. 1 or whether any pier is necessary. I ought to be before the Committee to show whether it is necessary or not, and that people, under cover of what may appear an innocent provision, do not bring forward a case for carrying on a competition against the passengers can be landed from the Isle of Wight on to this station at the end of the pier; and unless passengers can be so landed there is little use in putting a railway pier. Assume that they simply make a siding and any jetty or pier—and I am told that there is a depth of water at Stonepoint of four fathoms at low water—ought not I to have the opportunity of objecting to this method of competition?

MR. LICKARDS: But you will have an opportunity of objecting to it when they come to make a pier. Your petition seems to intend that they will come for such a pier.

Ledgard: Paragraph 8 must be taken in connection with the rest of the petition which alleges an injury under this bill, and raises the question of competition by means of the proposed works.

The CHAIRMAN: There is no pier to be constructed under the bill.

Ledgard: But it proposes to construct railway No. 1 down to Stonepoint; a pier is only necessary where there is shallow water. As soon as the railway is constructed to Stonepoint, the company will compete with us for traffic from the Isle of Wight that now pays toll to us at Southampton.

The CHAIRMAN: What you have to establish before us is that there will be a probability of interference with the existing traffic?

Ledgard: The promoters seem to dispute that our jurisdiction extends to the point where the railway crosses; but I am prepared with evidence.

[Mr. A. Henry Skelton, clerk to the Harbour Board, was examined as to the limits of their jurisdiction.]

Pembroke Stephens, Q.C. (for corporation of Southampton): The petitioners describe themselves as the municipal authority having the local management of the town, and allege that the interests of the town and its inhabitants will be injuriously affected by the bill, which will also act injuriously to their property, rights and interests, and the interests of their creditors. Corporations have been heard to represent the interests of a town; and we say that it is evidently intended by carrying this line down to the shore at Stonepoint to create a new landing place which may seriously damage the interests of Southampton. We have seen what can be done in the way of diversion of traffic already by the removal of the Peninsular and Oriental steamboats to Tilbury. A railway like this, coming down to a point on the beach, can have no meaning unless it is intended to establish a new point for the arrival and departure of steamers. And the traffic which, under ordinary circumstances, would come to Southampton docks and benefit the town would, or might, by this line, be carried to a point upon the coast nearer the Isle of Wight, and more convenient for channel communications generally. Whatever profit people may gain from carrying on traffic at this new point must necessarily be so much taken away from the town of Southampton.

The CHAIRMAN: We do not think the corporation of Southampton have any reason to be afraid of what is going to be done under this bill.

Wakeford, Parliamentary agent (for the

Southampton dock company): Under clause 4 of the bill power is taken to make works and conveniences in connection with the railways, which works and conveniences are indicated on the deposited plans as comprised within certain limits of deviation, which go down to deep water. Those works and conveniences comprise landing stages and works of the kind which would admit of vessels of 500 or 600 tons coming close up to the railway. This must accordingly be made for some future purpose, thereby inserting the thin end of the wedge towards a future competition.

Mr. RICKARDS: You will have an opportunity of obstructing the thick end of the wedge when further powers are asked.

Wakeford: We shall then be told that Parliament has sanctioned the thin end of the wedge, and we desire to interpose now.

The CHAIRMAN: We do not think that the competition is within an appreciable distance of you at present.

Batten (in reply): I grant that if you had the landowners here petitioning against the bill they would be entitled to be heard though we did not injure them at all; but, taking first the case of the harbour board, notwithstanding the extent of their jurisdiction, they are not entitled to be heard, for the navigation will not be interfered with by our works. The South-Western railway, as we have seen from the evidence, crosses the river Test already at a point below us by a bridge, under which no boat can pass. In the *Fareham Bill* (1 Clifford & Rickards, 68) the *locus standi* of the Southampton harbour board was limited to the point of alleged obstruction. The right of the harbour board to scour and deepen the channel up to Red-bridge simply gives them an enabling power to deepen; but unless they can show that we are going to cause some obstruction to the navigation, I submit that they are not entitled to be heard.

The CHAIRMAN: We have always held that wherever there is any interference with water the conservancy of which is vested in any body, that body is entitled to be heard.

Batten: The channel here is of the most trivial character.

The CHAIRMAN: The Act has defined how far the jurisdiction of the harbour board extends; we cannot go into the question whether the channel is an important one. We always allow the conservators of a river to appear when a bridge is proposed that will cross the river.

Mr. RICKARDS: In the same way as we allow the road authority to appear against any works that might interfere with a road.

Batten: Then I would ask you to limit their

locus standi to this one point, as it was limited in the *Fareham Bill*. I do not know whether I am to argue the question of competition arising on railway, No. 1, with regard to them and the other petitioners.

The CHAIRMAN: We need not trouble you.

Mr. RICKARDS: The *locus standi* of the Harbour Board will be against so much of clause 4 (the works clause) as relates to Railway, No. 2.

Locus standi of Petitioners (2) and (3) Disallowed.

Agents for Petitioners (1), *Sherwood & Co.*

Agents for Petitioners (2 and 3), *Simon, Wakeford, Goodhart & Medcalf.*

Agents for Bill, *Martin & Leslie.*

THAMES DEEP WATER DOCK RAILWAY BILL.

24th April, 1882.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. PARKER, M.P.; Sir JOHN DUCKWORTH; and Sir F. S. REILLY.)

Petition of (1) LONDON AND ST. KATHERINE'S DOCK COMPANY.

Railway—Dock Company — Road, Interference with—Road Authority, How far Representative—Statements in Petition not before Court—Access to Docks—Level Crossing—Power to Substitute Bridge—Authorized Works Inconsistent with Proposed—Limited Locus.

Practice—Landowner, Noticed and Scheduled, but not Petitioning as such—Formal issue, how far Raised by Objections—S. O. 128 (Petition against Bill to specify grounds of Objection).

A dock company petitioned against a railway bill, complaining that the works would interfere with the levels of a road forming the main access to their dock premises for heavy road traffic. The promoters rejoined that the West Ham local board had also petitioned against the bill as the road authority, and accordingly must be taken to represent the petitioners. The dock company, however, showed that in 1871, in an Act of a gas company, they had obtained the insertion of a clause dealing with this very road, and reserving to the dock company the right either of retaining an existing level crossing or of substituting for this a bridge, and they alleged that the works now proposed would be inconsistent

with the works contemplated by the Act of 1871 :

Held, that the Court could not take into consideration the statements contained in the petition of the West Ham local board as to their jurisdiction over the road in question, their petition not being before the Court; and that there was a sufficient disturbance of the statutory position of the dock company to entitle them to a limited *locus standi*.

The dock company claimed a general *locus standi* on the ground that they were landowners who had received notice, and were mentioned in the deposited plans and book of reference. Any formal allegation on this head had been omitted from their petition. They sought to cure the defect in the petition by pointing to one of the objections, which, in accordance with the usual formula, denied "that the bill contained any powers for taking and using any lands" . . . "belonging to the petitioners," arguing from it that the promoters themselves had raised the very issue :

Held, however, that the S. O. required petitioners to put their own case in issue, and that the mere introduction of a common form into the notices of objection did not enable the Court to disregard the S. O.

The *locus standi* of the London and St. Katherine's dock company was objected to, because (1) no lands, buildings, or other property of the petitioners were alleged to be, or were in fact, taken; (2) the West Ham local board, who had also petitioned against the bill as the road authority of the district, represented the interests of the public in the road referred to, which was a public road; (3, 4 and 5) no sufficient ground or interest was shown according to practice.

Pope, Q.C. (for petitioners) : The first question which arises is a point upon which I can find no direct authority. The first objection alleges "That the petition does not allege or show, nor is it the fact, that the bill contains any powers for taking and using any lands, buildings, or other property belonging to or occupied by the petitioners." It is perfectly true that the petition does not allege it, but it

is equally true that we are landowners whose lands are taken, though, by inadvertence, no allegation has been omitted from the

petition. The question therefore is, when it is once disclosed by the plans and book of reference that a landowner's land is taken, is it an absolute *sine quâ non* that he should allege that fact in his petition if the Court is made acquainted with it *aliunde*? Again, the matter is not left nakedly in that position, because the issue is raised by the defendants in the action, who give us notices of objection which are intended to traverse our right to appear, and among the notices of objection they not only say that the petition does not allege that the petitioners' lands are taken, but they put in issue the fact itself.

The CHAIRMAN : They have supplied the common form which you have omitted?

Pope : That is what I contend. This has been settled as the common form of objection, and I avail myself of it as an argument, and as raising the point on the pleadings, because it is either an immaterial objection in the notices of objection, or the fact must be an important fact, if disclosed *aliunde*. We can prove that we are landowners, and we have received the ordinary notice as landowners whose lands are liable to be taken under the bill.

The CHAIRMAN : I suppose by the deposited plans it appears that your lands are taken?

Pope : Yes, it is a mere inadvertence that the fact has been omitted from the petition.

Pembroke Stephens, Q.C. (for promoters) : My learned friend is ingeniously availing himself of a technicality to struggle for a *locus standi* to which otherwise he would not be entitled. He is avowedly trying to establish by means of the objections a position as a landowner to which he would not be entitled upon his own petition. The practice of Parliament, however, is governed by the Standing Orders, one of which (128) says expressly that "No petition against a private bill shall be taken into consideration by the Committee on such bill, which shall not distinctly specify the grounds on which the petitioners object to any of the provisions thereof, and the petitioners shall only be heard on such grounds so stated."

Pope : I concede that if I am admitted to a *locus standi* I can only be heard upon the allegations of my petition. It is not a question of my grounds of petitioning, but of my right to appear.

Stephens : Then, the point is, should Mr. Pope be entitled to claim a *locus standi*, not upon his petition, but upon the notice of objections, admitting, as he does in effect, that when he has got in upon the notice of objections, he cannot make use of the position so acquired?

Pope : I do not say that.

Stephens: As his petition is silent, he plainly cannot be heard in the committee-room to make any use of the *locus* he is setting up here in respect of his being a landowner.

Pope: Even if I had alleged in my petition that I was a landowner, I should not have objected to the bill on the ground that being a landowner the promoters were taking my land. I should have objected on the same grounds that are now contained in my petition. The question is whether I am not equally entitled to raise these objections—being, in fact, a landowner—as if, mentioning that fact, I had made these very objections.

Stephens: S. O. 128 must have been passed with some object, namely, to regulate the practice with regard to petitioners; and there being thus an express practice on the subject of petitions and their contents, the question is whether, a common form of objection having been used which happens to suit the purposes of my learned friend, he is entitled to take advantage of the accident and so get away from the general practice of Parliament.

Pope: The S. O. has reference to the business before committees, who are only to take into consideration the matters included within the four corners of a petition, but that has nothing to do with the decision of the Referees Court as to the right of an individual to be heard.

The CHAIRMAN: The object of the S. O. was, I suppose, that the promoters might know the grounds of objection to their scheme?

Pope: Yes.

Stephens: My learned friend throws into the scale the fact of his clients having received notice as landowners, but that is not enough to entitle them to be heard. (*Hull Docks Bill*, 1 Clifford & Stephens, 137.)

Pope: It was disputed in that case whether the property in question was the property of the petitioners.

Stephens: The case was argued as if it was their property. In this matter, my learned friend has taken a technical course, for the purpose of getting a *locus standi*; but the technical point is against him, for if he got a *locus standi* as a landowner, he could not speak as a landowner, owing to the defect in his petition. The utmost he can claim is a *locus standi* as to the road which he petitions about, supposing you are of opinion when you have heard him that he is entitled to any *locus standi* at all.

The CHAIRMAN: The S. O. requires that the petitioner should put in issue his case, and we do not think that the fact of the introduction of the common form in the grounds of objection,

which may perhaps have put the question in issue, enables us to get over that S. O.

Pope: Then I will go on with my general argument. The bill is one "to authorise the Thames deep water dock company to make a railway to the North Woolwich branch of the Great Eastern railway and for other purposes." The petitioners are the large dock company who have constructed and opened the Albert and Victoria docks. In the year 1871, the Gaslight and Coke company promoted a bill in Parliament for the construction of a railway which interfered with the access to the petitioners' docks, and sec. 6 of that Act, inserted at the instance of the petitioners, provided that for the accommodation and protection of their Victoria dock estate, the gas company should construct and maintain the road mentioned in that section, as a level crossing over the railway by that Act authorised, and further that the petitioners should be at liberty at any time thereafter to make a bridge over the railway, either in substitution for or in addition to the level crossing, and that the railway and works authorised by that Act should be constructed so to enable the petitioners to make such bridge of the dimensions in that section mentioned. The road mentioned in that section has been constructed in accordance with the provisions of the section, and now forms an important means of access to the petitioners' docks and property. Our position accordingly is that we have not only the ordinary right of crossing the road, but we have expressly confirmed to us by Act of Parliament the right to exercise an option, either that the road shall be maintained as a level crossing by those who made it, or that we should be at liberty to construct upon definite plans and sections mentioned in the Act of Parliament an over bridge, so as to prevent the access to our docks from being embarrassed by a level crossing. We have a right to both a level crossing and an over bridge: whereas by the bill it is proposed to enable the promoting railway company to make and maintain the railway in clause 4 described, and for that purpose to divert the road in question, which at present is a straight road crossing on the level the railway which takes traffic to our docks, and to divert this road and carry it over the new railway by means of a bridge, with an incline of 1 in 30 on either side of the bridge. The traffic along this road is of an exceedingly heavy description, consisting to a large extent of wagons laden with merchandise of great weight, and the gradients which it is proposed to introduce into the road are such as to render it almost useless for the purposes of

The CHAIRMAN : We must *Allow* the Petitioners a *locus standi* against clause 4 (the works clause), and so much of the preamble as relates thereto.

Agent for Petitioners, *Rees*.

Petition of (2) OWNERS, &c., OF LEGAL QUAYS, &c.

Railway—Dock—Agreements—Owners &c., of Legal Quays—Apprehension of Undue Preference—Incorporation of General Acts—Effect of—Confirmation of Agreements by Railway Commissioners.

A bill promoted by a dock company for the construction of a railway, and giving by clause 25 to the company and the Great Eastern railway company, the power of entering into working agreements, and incidentally of agreeing as to "rebates, drawbacks and allowances" to be made by either of the companies to the other, was opposed by certain owners, lessees and occupiers of legal quays, &c., who feared that under these powers undue preference might be granted to the injury of their business, and sought to have all such agreements expressly subjected to confirmation by the railway commissioners. The promoters contended that this end was virtually attained by the incorporation of the public Acts, and by certain introductory words to the clause :

Held, however (following the course taken in previous cases of a similar kind), that the petitioners were entitled to a *locus standi* against the clause itself, and so much of the preamble as related thereto.

The *locus standi* of owners, lessees and occupiers of legal quays, &c., was objected to, because (1) no lands, &c., of the petitioners were taken; (2) no such competition as alleged would arise, and the bill contained no provisions affecting the petitioners; (3) the matters set forth in the petition were not such as, according to practice, could be raised before the Committee; (4) the petitioners had no sufficient interest entitling them to be heard.

Balfour Browne (for petitioners): Our objection is to clause 25, which provides that "The company on the one hand and the Great Eastern

railway company on the other hand may, subject to the provisions of Part III. of the Railways Clauses Act, 1863, as amended or varied by the Regulation of Railways Act, 1873, from time to time enter into and carry into effect contracts and agreements for and with respect to the following purposes or any of them (that is to say) the working, use, management and maintenance of the railway or any parts thereof; the management, regulation, interchange, collection, transmission, accommodation and delivery of traffic upon or coming from or destined for the railways of the contracting companies." And then comes the most important part:—"The fixing, collecting, payment, appropriation, apportionment, and distribution of the tolls, rates, charges, income and profits arising from the undertakings of the contracting companies or any part thereof. . . . The rebates, drawbacks or allowances to be made by either of the contracting companies to the other of them." An almost precisely similar clause was introduced into the *East and West India Dock Bill*, against which we sought to be heard (*supra*, p. 138), and counsel for the promoters at once conceded us a *locus standi* to see that we had the protection given by the Railways Clauses Acts, i.e., that the agreement should be subject to the approval of the Railway Commissioners, or else to ask for some other protection. Against the *Tilbury and Southend Bill*, in which there was a similar clause, though not of so objectionable a character, we were also, after argument, allowed a *locus standi* [*supra*, p. 187]. When we appeared before the Committee against the *East and West India Docks Bill*, counsel conceded a proviso that "nothing contained in the bill should take away any rights which we might have under the Railways Clauses Acts, 1863, or the Regulation of Railways Act, 1873." It will hardly be urged that the position of the petitioners here is different from what it was against the *East and West India Docks Bill*, inasmuch as clause 25 has these introductory words, "Subject to the provisions of Part III. of the Railways Clauses Act, 1863, as amended or varied by the Regulation of Railways Act, 1873," which were wanting in the other case; but these words do not give us the protection to which we are entitled. If clause 25 were passed as it stands, the Railway Commissioners would say, "On the face of clause 25 there is a power to the company and the Great Eastern company to enter into agreements for giving rebates, allowances and so on; and that is a power which we cannot strike out." The Railway Commissioners accordingly, notwithstanding those words at the commencement of

use, would not have power to disallow amendment, though upon a revision of the bill in ten years hence they might have to modify it and cut out the power to amend, &c.

Mr. Stephens, Q.C. (for promoters): The cases to which reference has been made were proposed to be introduced for the first time. No new dock is proposed here. This is simply a bill authorising a dock to be made, and certain arrangements to be made between the promoters and another railway company.

CHAIRMAN: The promoters who are going to have the railway being a dock company? *Mr. Stephens*: In the cases cited, the petitioners have a stronger claim than they have here, for the bill is "subject to the provisions of the Railways Clauses Act, 1863, as amended or by the Regulation of Railways Act, 1873" which we have inserted—were omitted. We propose to incorporate the public Acts, which the bill did not do. Our bill does not overrule the general law, for the agreement is not to be in any operation till it is approved by the Board of Trade. Anybody who is not satisfied may enter into communication with the Board of Trade, and draw attention to the clauses.

CHAIRMAN: Would the Board of Trade take into consideration how far an agreement between two parties would affect a third party?

Mr. Stephens: I think they would disallow the bill if they were not satisfied, upon representations made to them by outside parties.

Sections 24 and 25 of the Railways Clauses Act, 1863, expressly provide for objections being brought before the Board of Trade.

It has not been shown that any injury is done to the petitioners by the enactment of clause 25. The petition proceeds upon the ground that this is an amalgamation bill, which it is not. In the East and West India Dock Company the power was not one merely of competition between the two railway companies, but extended to the providing for the railways of land quayside space or wharves and railway or other accommodation for the dock and other works of the company. There is nothing like that in the present bill.

CHAIRMAN: We think the Petitioners are not a *locus standi* against clause 25, and the preamble as relates thereto.

For Petitioners, Wyatt, Hoskins &

Petition of (3) LONDON, TILBURY AND SOUTHBURY RAILWAY COMPANY.

Dock—Railway—Connecting Line—Rival Systems—Change of Outlet for Dock Traffic—Agreements with Dock Company lower down the River—Breach of Faith—Competition.

A dock company obtained power by an Act of 1881, to enter into agreements with a railway company A., having a railway adjoining the site of the dock, and also with two other railway companies, B. and C. In the next session the dock company promoted a bill for a short line of railway giving independent access to the system of railway company B. Railway company A. petitioned on the ground of competition, and likewise of breach of faith, their support of the dock bill of the previous year having, as they alleged, been sought and given on the understanding that they were to carry the dock traffic. The promoters rejoined that railway company A. not only had made no agreement with them, but had entered into a hostile agreement with another dock undertaking to be established 14 miles lower down the river:

Held, however, that the proposal to construct the new railway, and thereby to change the destination of dock traffic from railway A. which had previously afforded the only outlet for such traffic, to railway B., entitled the petitioners to a *locus standi* on the ground of competition.

The *locus standi* of the London, Tilbury and Southend railway company was objected to, because (1) none of the lands, stations, &c., of the petitioners were taken, or any facilities affecting them; (2) the bill would not cause any competition with them within the meaning of the Standing Orders; (3) the matters alleged were not of such a nature as according to practice could be raised before the Committee; (4 and 5) the petitioners had no sufficient interest.

A. G. Rickards (for petitioners): By the Thames Deep Water Dock Act, 1881, a company were incorporated who were authorised to construct a dock and basin entering from the river Thames on lands part of Dagenham marshes, adjoining the property and railway of the petitioners; and it was provided,

amongst other things, that the company and the petitioners, amongst other railway companies, might enter into agreements with respect to the interchange, accommodation, conveyance, and delivery of traffic coming from or destined for the respective undertakings of the contracting companies. It was on the faith of the benefits which might be expected to result to the petitioners from such agreement that they approved of the bill and acquiesced in the powers thereby granted for the formation of the said docks. At the time the Act was obtained, in 1881, there was only one railway, namely, ours, to the Thames deep water dock, and that unless this bill passes will still be the state of things. We say that it was in great measure, if not entirely, due to our support and assistance that the dock company obtained their Act of last session. The manager of our railway was asked by the company to give evidence, and did so on their behalf, and we certainly should not have followed that course but for the specific inducements with regard to the carriage of traffic from and to the proposed dock put forward by the dock company to secure our support. Last year's Act involved an interference with our property, sidings and works and the acquisition by the dock company of land intervening between our railway and the river. Had it not been for the advantages offered us by the dock company in return, such an interference would have been deemed prejudicial and very objectionable. Power is now sought by the bill for the dock company to make and maintain a railway of their own commencing by a junction with the North Woolwich branch of the Great-Eastern railway and terminating thirty feet or thereabouts from the southern fence of our railway. The railway extends from the site of the authorised dock at Dagenham to the London and Blackwall railway, over which we exercise running powers, and so connects with the North London and Great-Eastern railways, and the effect of the proposed railway would be to divert from us the traffic of the dock and thus to affect us injuriously.

The CHAIRMAN: Is there a railway from Liverpool-street to Beckton now?

Rickards: Yes, and this bill takes power to construct a junction between Beckton and the dock, so giving a fresh communication in the hands of the Great-Eastern railway—by means of the 25th clause—between Liverpool-street and the dock, in competition with us, who are now the only company who can convey traffic from London to the dock. A *locus standi* has been granted to companies under somewhat similar circumstances, i.e., where the termini of

the company petitioned against and the petitioning company were not exactly the same. (*Hounslow and Metropolitan Railway Bill*, 2 Clifford & Rickards, 105; *Elham Valley Light Railway Bill*, 2 Clifford & Rickards, 240; *Hundred of Hoo Railway Bill*, 2 Clifford & Rickards, 257; *Gravesend Railway Bill*, *supra*, p. 160.) Apart from the question of competition, we say that the prosecution of the bill involves a breach of the understanding of last year, on the faith of which the dock company obtained our support to their bill, and if powers had then been taken to make the railway now proposed, or had any such suggestion been made, instead of supporting we should have strongly opposed it.

Pembroke Stephens, Q.C. (for promoters): The competition is of the most shadowy character. The real objection of the petitioners is the so-called breach of undertaking. The Act of 1881 was for making a dock for the first time upon the proposed site at Dagenham, and the petitioners have no railway into the dock.

Rickards: I am instructed to the contrary. There is a siding actually into the dock at the present moment, and we have a station there.

Stephens: There is no dock; therefore there cannot be a siding.

Rickards: It is a basin now in process of being converted into a dock.

Stephens: My learned friend is referring to some old works; there is no dock, and consequently there can be no siding, and no station.

Rickards: There is a dock authorised.

Stephens: But not begun. The Act of 1881 gave power to three companies, of which the London, Tilbury and Southend is one, to agree as to facilities with the dock company. The London and Tilbury company have made an agreement with us; they had their opportunity, and they did not do so; but they have entered into arrangements with another company as a new dock, ten or fourteen miles lower down the river. The East and West India dock company have a binding agreement with them, and what the petitioners would like to do would be to get a *locus standi* upon the faith of their attitude in a former session to try and kill this dock of ours in the present one.

Mr. PARKER: What has changed their feelings so much within one year?

Stephens: That is what we want to know. It is a strong thing for a company which has changed front so remarkably itself to come and ask for a *locus standi* on the ground of a breach of understanding. The petitioners had power to agree, and did not avail themselves of it; are we, therefore, to be shut out from agreeing with another company with whom last year

equally authorised to agree, and from obtaining independent railway station? We are simply following the legislation of last year. The petitioners on their own account, were assenting to our having last year the power of entering into agreements with the Great Eastern as well as with themselves. Under the Act of 1881, we might obtain facilities from the companies, or from only one of them. We do not obtain them from the petitioners, but from one of the other companies. That is not competition in the ordinary sense of the term. As to the suggested interference with the traffic, there is no traffic at present so that the petitioners will not have anything taken away from them.

CHAIRMAN: We think in this case the petitioners are entitled to a *locus standi* on the question of competition.

for Petitioners, Dyson & Co.

for Bill, Bell.

TILBURY AND GRAVESEND TUNNEL CONNECTING RAILWAY BILL.

of THE SOUTH ESSEX WATERWORKS
ACT, 1882.

1, 1882.—(Before Mr. PEMBERTON, M.P.,
Chairman; Mr. HINDE-PALMER, M.P.; Mr.
DICKSON, M.P.; Sir JOHN DUCKWORTH; Sir F.
LY; and Mr. BONHAM-CARTER.)

*Tunnel—Water Company—Pumping
—Underground Water, Interference
with Property in—Chasemore v. Richards,
Water alleged to flow in Defined Chan-
nels and Surface Water.*

authorised the construction of a railway to be carried under the River Thames, between certain points in the counties of Kent and Essex. The petitioners were a water company in Essex, whose works and pumping station were situated about two miles from a part of the proposed railway. They claimed that the works in connection with the railway would intercept and cut off certain underground streams from which they derived their water supply, but maintained that these streams flowed in defined and defined channels, as evidenced by the existence of which they referred to the presence of lakes and streams at spots

above ground close to their pumping station; and on this assumption they claimed an exemption from the general principle as to non-proprietorship in underground water, laid down in *Chasemore v. Richards*, L.R. 4 Q.B.D. 104:

Held, however, that there was nothing to take their claim out of the principle decided in that case, and that their *locus standi* against the bill must accordingly be disallowed.

The *locus standi* of the petitioners was objected to, because (1) the petition does not allege or show, nor is it the fact, that the bill contains provisions for taking or using any part of the undertaking, reservoirs, mains, pipes, lands, property or accommodations of the petitioners; (2) the only ground upon which the petitioners claim to be heard is that their property may or will be injuriously affected by the railway, No. 1, proposed to be authorised by the bill, inasmuch as the petitioners' water supply will be greatly diminished, if not entirely abstracted, both during the construction and after the completion of the said railway, but the promoters submit that such a contingency, supposing it to exist, does not entitle the petitioners to be heard against the bill according to the practice of Parliament; (3) the petition does not allege or show that the petitioners have any such interest in the objects and provisions of the bill as entitles them to be heard against it.

Fooks (for petitioners): By the bill, power is taken to construct a tunnel and railway under the Thames to form a connecting link between railways in the county of Essex and the county of Kent, and we allege "That it is proposed to construct the said railway in part at a great depth from the surface in the chalk formation, from which your petitioners derive their water supply, and at a distance not exceeding two miles from the pumping-station of your petitioners situate at Grays Thurrock. That your petitioners were incorporated with an especial view to the utilisation of water from the sources of supply in the chalk formation, and accordingly were invested with special powers for accomplishing that object, including the making and maintenance of a pumping-station at Grays Thurrock, in proximity to the river Thames, the establishment of reservoirs and distributing mains, and the execution of other extensive and important works required for the purposes of the undertaking. That your petitioners are advised that the construction of the tunnel

and maintenance of the works for the said connecting railway and its approaches, necessarily involve the tapping of the chalk formation from which your petitioners' water supply is derived, at a much lower level than the level at which such water supply is now taken for the purposes of your petitioners' undertaking; and that great diminution, if not the entire exhaustion of such water supply is consequently to be apprehended, to the utter ruin of your petitioners' undertaking, and the serious injury and prejudice of the large population of the district now dependent on your petitioners' undertaking for their water supply. That your petitioners are further advised that the effect of the pumping operations for keeping the works of the said railway and its approaches both during construction and after completion free from water, must necessarily affect the source of your petitioners' water supply, and that to the great injury of the public as well as your petitioners." The contention of the promoters appears to be that, assuming the contingency that the whole of the water of the petitioners is abstracted, that is not such a contingency as, in the practice of Parliament, entitles them to a *locus standi* against the bill. *Chasemore v. Richards*, L. R. 4 Q.B.D. 104, decides that no one has a property in underground water, but our water is water which comes to us in defined and known sources, the use of that water is given to us by our Act of Parliament, and we are protected from any unlawful interference by the 14th section of the Waterworks Clauses Act, 1847, unless repealed by a provision of a special Act. By our Act of 1861 it was provided that, "Subject to the provisions in this and the incorporated Acts of Parliament, the company may enter upon, take and use such of the lands, springs and streams delineated on the deposited plans within the limits of deviation and described in the Book of Reference, and also any such easement, privilege, power and authority over the same, as may be necessary for the purpose of the works authorised." Within those limits was comprised an estate of about 160 acres at Grays Thurrock in the chalk formation, upon which, at the time the company was established, there were developed on the surface small lakes and streams of water, such streams having issued from springs in the chalk; and we say that the promoters, by constructing their tunnel under the Thames, will naturally lower those springs and divert them. We have constructed works upon this estate at Grays Thurrock at great expense, where the water which rises from the chalk in the shape of springs is developed into lakes and streams, and is utilized by us.

The CHAIRMAN: This tunnel is two miles from your pumping station?

Balfour Browne (for promoters): The distance is even greater than that.

Fooks: It is not so far from this estate of 160 acres. This is no fanciful injury that we are complaining of; there are underground channels in the chalk into which a heading or shaft is sunk, by which means the water is got into a well. The water is pumped up, and by that means the surface water is gradually lowered; but if the water were let alone and no pumping took place, it would come out upon the ground at a level of from 4 ft. to 8 ft. below Trinity high water mark. The water is taken to the works in this way: small wells are sunk, say to a depth of 18 ft., and from these wells, headings, or tunnels, or culverts are driven, by which the water runs out. We know perfectly well that the water is flowing underground in large volume from north to south in channels, some of which come out on the surface and some of which are tapped underground, and we get our supply by utilizing that water underground, as well as indirectly the water that comes out on the surface. This is a case of underground sources of supply in defined and known channels, and we ask to be heard in order to obtain a clause to protect our rights in them.

The CHAIRMAN: What sort of clause would you ask for?

Fooks: A clause saying that "nothing herein contained shall authorise them to do or execute any works which shall obstruct or diminish our supply." This tunnel might be so constructed and so managed as to inflict the injury of which we complain, and if they inflicted that injury the answer would be that the promoters had been authorised by Act of Parliament to do it. By having our water abstracted we should not be able to supply our district, and we should be subject to penalties.

Broune was not called on to reply.

The CHAIRMAN: We are of opinion that the *locus standi* should be *Disallowed*. We do not see that the case can be taken out of the principle decided in *Chasemore v. Richards*.

Locus Standi Disallowed.

Agent for Petitioners, *Rees*.

Agents for Bill, *Hanly & Fellows*.

up their rails at any time, at the instance of third parties affected by this user of the road; or the local board (who now act in place of the vestry) might to-morrow withdraw this permission if they saw fit to do so. Is there, then, any substantial case of injury entitling the petitioners to be heard?

Sir F. S. REILLY: You say the resolution is revocable, but it has not been revoked; it is still in force.

Stephens: Yes, but meanwhile the present local authority, the local board, which did not grant the easement to the petitioners, has granted our application to use the road. Then clause 11 has been carefully framed to give precedence to the petitioners' traffic, where it clashes with that of the tramways, and to secure that the petitioners' rails shall be subject to no injury at the point of crossing. Having regard therefore to all the circumstances, does not the Provisional Order fairly provide for all possible mischief which we can do to the petitioners? There is a string of decisions showing that, where parties have been admitted in cases of this kind, they have only been allowed to be heard in respect of physical interference with their railway.

The CHAIRMAN: That seems to be all that the petitioners want; but if they were not before the Committee, clause 11 might be altered to their injury, even by the Committee itself.

Locus standi Allowed against so much of the works clause as authorises interference with the railway of the petitioners.

Agents for Petitioners, Dyson & Co.

Agent for Bill, R. S. Pollard.

TRAMWAYS PROVISIONAL ORDERS (No. 3) (LONDON SOUTH DISTRICT TRAMWAYS ORDER) BILL.

Petitions of (1) OWNERS, LESSEES AND OCCUPIERS, &c. (ALEXANDER BELL AND OTHERS); (2) OWNERS, LESSEES AND OCCUPIERS, &c. (BENJAMIN WEIR AND OTHERS).

5th June, 1882.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. PARKER, M.P.; Mr. HINDE-PALMER, M.P.; Sir F. S. REILLY; and Mr. BONHAM-CARTER.)

Tramway—Provisional Order—S. O. 135 (Petitions against Tramway Bills)—Frontagers—Houses Abutting upon a Street—Villa-holders with Carriage Entrances, as Frontagers—What Constitutes “a Street”—Alteration of Width of Street—Board of Trade—Practice—Rate-

payers—Representation—S. O. 13 (Notice to Frontagers in Tramway Cases)—Its Terms Contrasted with S. O. 135.

Against a Provisional Order to authorise the construction of tramways two petitions were presented by individual owners or occupiers of property along the proposed route. This lay along a road of somewhat mixed character, having at either extremity a large number of houses and shops abutting on the thoroughfare, while midway for about a quarter of a mile there were no houses, strictly speaking, along the road, which was bordered merely by the fences and occasional lodges or gates belonging to the villas or large houses which stood at some distance from the road in their own private grounds. Both petitions were numerous signed, one almost exclusively by the larger property owners, the other by the shopkeepers and villa-holders in more equal proportions. It was objected by the promoters that only some of the petitioners could be regarded as fulfilling the conditions called for by S. O. 135, and that the portion of the road in question was not “a street” within the legitimate meaning of that term:

Held, however, that both sets of petitioners were under the circumstances entitled to a hearing; and that it was not necessary that premises should actually abut upon the street or road, if by obstruction of the access to a lodge or gate persons were affected in the enjoyment of their premises.

The *locus standi* of (1) Alexander Bell and others was objected to, because (1) no land, house, &c., of theirs was taken; (2) they were not owners or occupiers of any houses, shops or warehouses, in any street through which it was proposed to construct the tramways within the meaning of S. O. 135; (3) certain of the petitioners (named) were interested merely in houses, shops, or warehouses, which did not abut upon any part of any street where the tramways were to be constructed; (4) such of the petitioners (if any) as were *bona fide* frontagers within the meaning of S. O. 135, were only entitled to be heard, so far as their respective premises were affected within the terms of that S. O.; (5) complaints as to increase of local

Michael: I now pass to another point. From the objections it would seem as if it will be contended that we should at the utmost be limited to certain parts of our petition, but this is never done, though the Court may limit petitioners to certain clauses of the bill. In one part of our petition we refer to the action of the Board of Trade who, seeing that for a large portion of the distance the width of the road left will be less than 9 feet 6 inches, inserted in the draft order as framed by them a provision that the tramway shall not be constructed until means have been taken by the company to widen the road so as to allow of the full width, 9 feet 6 inches. When we come to merits, we shall have to raise the question whether this can be done or not, and whether if done it should be done at the expense of the promoters or at the expense of the ratepayers; and we petition against anything being inserted in the bill that will entail upon us as owners and occupiers additional expense owing to the construction of the tramway. My learned friend will no doubt contend that we ought not to be allowed to appear on these clauses of our petition; but it is a substantive injury to us notwithstanding.

Saunders, Q.C. (for petitioners (2)): Substantially the same points are raised in our petition. As regards the question whether this is a street or a road, Mr. Rickards, in the *Brentford, Isleworth and Twickenham* case, said we must take a "street" to include a road (2 Clifford & Rickards, 141).

[A plan was here put in showing the petitioners' houses.]

The CHAIRMAN: This seems to be very much the same case as that in which we formerly decided that a continuous row of villas constituted a street.

Saunders: Yes, in the *Lea Bridge, Leyton and Walthamstow* case (3 Clifford & Rickards, 73). If this is not a street, at all events it is a road continuously built upon. The objections say we do not allege that our access will be interfered with in the terms of the S. O., but we say, "Your petitioners are respectively owners, lessees, and occupiers of houses, gardens, and premises abutting upon Balham-hill and the Balham-hill-road, along which roads the tramway is proposed to be laid, and your petitioners most strongly object to the construction of the said tramway. The houses abutting on the said roads are for the most part of considerable value for residential purposes, and many of your petitioners have expended very large sums of money in the erection, additions to, or purchase of their residences. Your petitioners humbly submit, and are prepared to prove, that

they will be subjected to very great inconvenience and annoyance if the proposed tramway be authorised, and that their property will be very largely depreciated in value in consequence of the existence of the proposed tramway. Your petitioners further submit that the district is entirely unsuited for the introduction of tramways, and that no such public necessity can be shown to exist for the construction of the proposed tramway as to justify the inconvenience which it will cause to your petitioners."

Pembroke Stephens, Q.C. (in reply): The petitioners must come within S. O. 135, or they have no right whatever to be heard; and they are only entitled to be heard, if at all, on "such allegations" of their petition, that is to say, allegations that the construction or use of the tramway will injuriously affect them in the use or enjoyment of their premises, or in the conduct of their trade or business. In the *King's Cross* case (2 Clifford & Rickards, 107) a discussion arose as to what S. O. 135 really meant, and the Court framed their decision in the actual words of the S. O.

The CHAIRMAN: If we gave a *locus standi* at all, it would be under S. O. 135, leaving it to the Committee to decide how far it went.

Stephens: Then with regard to the question of what is a "street," in the sense in which that word is used in the S. O., I should point out that in the *Lea Bridge, Leyton and Walthamstow* case, to which reference has been made, the Court did not consider that the houses there were in a "street," so as to give the petitioners a *locus standi*, for the *locus standi* was disallowed.

Saunders: But all those within the metropolitan district did obtain a *locus standi*.

Stephens: Their *locus* was admitted. The history of S. O. 135 shows that it was framed to meet the cases of shopkeepers and others, whose business was interfered with by the construction and working of tramways in towns, and not to meet the case of people living on a suburban road.

Sir F. REILLY: You cannot construe a S. O. merely according to the mischief it was framed to remedy. Parliament, in framing the Order, may have gone far beyond that mischief which originally drew its attention to the subject?

Stephens: As regards some of these petitioners there is no interference of the kind pointed out by the S. O. No carriage or cart going to their houses would be interfered with by the tramways. The tramway only passes the gateway, the house itself being a long way off.

The CHAIRMAN: It would nevertheless affect the access to their lodge or gate. It would seem



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with the same people. The same people who were
in the same place at the same time. The same people
who were in the same place at the same time. The same
people who were in the same place at the same time.

The first step in the construction of the model is the choice of the initial state. The initial state is chosen to be the state of the system at the beginning of the observation period. The initial state is chosen to be the state of the system at the beginning of the observation period.

For 1951, the following figures are available: 1951, 1950, 1949, 1948, 1947, 1946, 1945, 1944, 1943, 1942, 1941, 1940, 1939, 1938, 1937, 1936, 1935, 1934, 1933, 1932, 1931, 1930, 1929, 1928, 1927, 1926, 1925, 1924, 1923, 1922, 1921, 1920, 1919, 1918, 1917, 1916, 1915, 1914, 1913, 1912, 1911, 1910, 1909, 1908, 1907, 1906, 1905, 1904, 1903, 1902, 1901, 1900, 1899, 1898, 1897, 1896, 1895, 1894, 1893, 1892, 1891, 1890, 1889, 1888, 1887, 1886, 1885, 1884, 1883, 1882, 1881, 1880, 1879, 1878, 1877, 1876, 1875, 1874, 1873, 1872, 1871, 1870, 1869, 1868, 1867, 1866, 1865, 1864, 1863, 1862, 1861, 1860, 1859, 1858, 1857, 1856, 1855, 1854, 1853, 1852, 1851, 1850, 1849, 1848, 1847, 1846, 1845, 1844, 1843, 1842, 1841, 1840, 1839, 1838, 1837, 1836, 1835, 1834, 1833, 1832, 1831, 1830, 1829, 1828, 1827, 1826, 1825, 1824, 1823, 1822, 1821, 1820, 1819, 1818, 1817, 1816, 1815, 1814, 1813, 1812, 1811, 1810, 1809, 1808, 1807, 1806, 1805, 1804, 1803, 1802, 1801, 1800, 1799, 1798, 1797, 1796, 1795, 1794, 1793, 1792, 1791, 1790, 1789, 1788, 1787, 1786, 1785, 1784, 1783, 1782, 1781, 1780, 1779, 1778, 1777, 1776, 1775, 1774, 1773, 1772, 1771, 1770, 1769, 1768, 1767, 1766, 1765, 1764, 1763, 1762, 1761, 1760, 1759, 1758, 1757, 1756, 1755, 1754, 1753, 1752, 1751, 1750, 1749, 1748, 1747, 1746, 1745, 1744, 1743, 1742, 1741, 1740, 1739, 1738, 1737, 1736, 1735, 1734, 1733, 1732, 1731, 1730, 1729, 1728, 1727, 1726, 1725, 1724, 1723, 1722, 1721, 1720, 1719, 1718, 1717, 1716, 1715, 1714, 1713, 1712, 1711, 1710, 1709, 1708, 1707, 1706, 1705, 1704, 1703, 1702, 1701, 1700, 1699, 1698, 1697, 1696, 1695, 1694, 1693, 1692, 1691, 1690, 1689, 1688, 1687, 1686, 1685, 1684, 1683, 1682, 1681, 1680, 1679, 1678, 1677, 1676, 1675, 1674, 1673, 1672, 1671, 1670, 1669, 1668, 1667, 1666, 1665, 1664, 1663, 1662, 1661, 1660, 1659, 1658, 1657, 1656, 1655, 1654, 1653, 1652, 1651, 1650, 1649, 1648, 1647, 1646, 1645, 1644, 1643, 1642, 1641, 1640, 1639, 1638, 1637, 1636, 1635, 1634, 1633, 1632, 1631, 1630, 1629, 1628, 1627, 1626, 1625, 1624, 1623, 1622, 1621, 1620, 1619, 1618, 1617, 1616, 1615, 1614, 1613, 1612, 1611, 1610, 1609, 1608, 1607, 1606, 1605, 1604, 1603, 1602, 1601, 1600, 1599, 1598, 1597, 1596, 1595, 1594, 1593, 1592, 1591, 1590, 1589, 1588, 1587, 1586, 1585, 1584, 1583, 1582, 1581, 1580, 1579, 1578, 1577, 1576, 1575, 1574, 1573, 1572, 1571, 1570, 1569, 1568, 1567, 1566, 1565, 1564, 1563, 1562, 1561, 1560, 1559, 1558, 1557, 1556, 1555, 1554, 1553, 1552, 1551, 1550, 1549, 1548, 1547, 1546, 1545, 1544, 1543, 1542, 1541, 1540, 1539, 1538, 1537, 1536, 1535, 1534, 1533, 1532, 1531, 1530, 1529, 1528, 1527, 1526, 1525, 1524, 1523, 1522, 1521, 1520, 1519, 1518, 1517, 1516, 1515, 1514, 1513, 1512, 1511, 1510, 1509, 1508, 1507, 1506, 1505, 1504, 1503, 1502, 1501, 1500, 1499, 1498, 1497, 1496, 1495, 1494, 1493, 1492, 1491, 1490, 1489, 1488, 1487, 1486, 1485, 1484, 1483, 1482, 1481, 1480, 1479, 1478, 1477, 1476, 1475, 1474, 1473, 1472, 1471, 1470, 1469, 1468, 1467, 1466, 1465, 1464, 1463, 1462, 1461, 1460, 1459, 1458, 1457, 1456, 1455, 1454, 1453, 1452, 1451, 1450, 1449, 1448, 1447, 1446, 1445, 1444, 1443, 1442, 1441, 1440, 1439, 1438, 1437, 1436, 1435, 1434, 1433, 1432, 1431, 1430, 1429, 1428, 1427, 1426, 1425, 1424, 1423, 1422, 1421, 1420, 1419, 1418, 1417, 1416, 1415, 1414, 1413, 1412, 1411, 1410, 1409, 1408, 1407, 1406, 1405, 1404, 1403, 1402, 1401, 1400, 1399, 1398, 1397, 1396, 1395, 1394, 1393, 1392, 1391, 1390, 1389, 1388, 1387, 1386, 1385, 1384, 1383, 1382, 1381, 1380, 1379, 1378, 1377, 1376, 1375, 1374, 1373, 1372, 1371, 1370, 1369, 1368, 1367, 1366, 1365, 1364, 1363, 1362, 1361, 1360, 1359, 1358, 1357, 1356, 1355, 1354, 1353, 1352, 1351, 1350, 1349, 1348, 1347, 1346, 1345, 1344, 1343, 1342, 1341, 1340, 1339, 1338, 1337, 1336, 1335, 1334, 1333, 1332, 1331, 1330, 1329, 1328, 1327, 1326, 1325, 1324, 1323, 1322, 1321, 1320, 1319, 1318, 1317, 1316, 1315, 1314, 1313, 1312, 1311, 1310, 1309, 1308, 1307, 1306, 1305, 1304, 1303, 1302, 1301, 1300, 1299, 1298, 1297, 1296, 1295, 1294, 1293, 1292, 1291, 1290, 1289, 1288, 1287, 1286, 1285, 1284, 1283, 1282, 1281, 1280, 1279, 1278, 1277, 1276, 1275, 1274, 1273, 1272,

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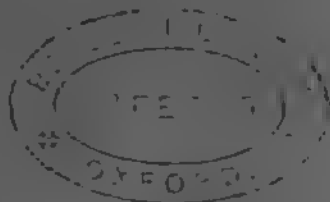
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An Index of Cases for the years 1881-3, and an Index of Subjects for 1883, accompany this Part.

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TEMPLE, *February*, 1884.



COURT OF REFEREES IN PARLIAMENT.

REPORTS FOR THE SESSION 1883.

. Where a Standing Order is quoted or referred to, the number is that of the Standing Orders for the Session 1884.

ALLOA, DUMFERMLINE, AND KIRKCALDY RAILWAY BILL.

Petition of THE GREAT NORTHERN AND NORTH-EASTERN RAILWAY COMPANIES.

15th March, 1883.—(Before Mr. PEMBERTON, M.P. Chairman; Mr. HINDE-PALMER, M.P.; Mr. PARKER, M.P.; Sir F. S. REILLY; Sir JOHN DUCKWORTH; and Mr. BONHAM-CARTER.)

*Railways — Competition — Alternative Routes
via East and West Coasts of Scotland—
Diversion of Traffic—Scheme promoted by
Competing though nominally Independent
Company—Reciprocal Facilities for Traffic
granted by previous Acts—Claim for Insertion
of similar Provisions in Bill.*

The bill authorised the construction of a railway from Alloa, on the river Forth, for 30 miles in an easterly direction across Fife. The petitioners were two out of three companies whose railways compose what is known as the East Coast route between Scotland and England, and they sought to be heard on the ground that the proposed railway, although nominally promoted by an independent company, was, in effect, an extension of the system of the Caledonian railway company, who represented the West Coast route. They claimed to be heard (1) generally on the ground of competition, which claim was not sustained; (2) on the ground that by an Act of 1865,

Parliament had conferred equal rights and facilities upon the companies owning respectively the East and West Coast routes, which principle had been subsequently re-affirmed in other Acts; and they relied especially upon the fact that a *locus standi* had been allowed to them upon petition against the *Alloa Railway Bill*, 1879 (2 Clifford & Rickards, 135) of which railway they contended that the railway proposed by the bill was virtually an extension, being in both cases promoted in the interest of the Caledonian company. They now asked for a *locus standi* in order to obtain the insertion of similar traffic facilities to those secured to them by the legislation of 1865. It was contended on behalf of the promoters that the circumstances of the promotion of the present line were not analogous to those of 1879 or of a subsequent bill in 1882, against which the petitioners also obtained a *locus standi*:

Held, that although not entitled to a *locus standi* on the ground of competition, the petitioners were entitled, in accordance with the principle established by Parliament in 1865, to be heard, upon a limited *locus standi*, to contend that the facilities granted by that Act should be extended to the railway proposed by the bill.

The *locus standi* of the petitioners was objected to, because (1) the rights, property and

interests of the respective petitioners and the interests of the districts accommodated by the respective railways are not proposed to be interfered with under the powers of the bill: (2) no such competition or interest in the traffic of the districts to be accommodated by the railways proposed by the bill is alleged by the petitioners as to entitle them to be heard; (3) no lands or property of theirs will be taken or interfered with; (4) the construction of the proposed railways will not deprive the petitioners of any traffic to which they are legitimately entitled, nor prevent the consignors of traffic for conveyance on their railways from using whatever route convenience may dictate; (5) in any event the opposition of the petitioners should be restricted to clauses 37, 38 and 39 of the bill, so far as the same relate to or may affect traffic known as "East Coast traffic;" (6) the petitioners allege no ground for a hearing according to the practice of Parliament.

Pope, Q.C. (for petitioners): The petition is a joint petition and represents the East Coast route to Scotland, the other company composing that route being the North British. The alternative route from London to Scotland, so far as the present case is concerned, is known as the West Coast route, and is formed of the railways of the London and North-Western and Caledonian railway companies, the latter having been amalgamated by an Act of 1865 with the Scottish Central railway company. These two routes have, since the Scottish amalgamations of 1865, formed the two main routes between Scotland and the South. At the time of those amalgamations, reciprocal rights and facilities for mutual protection, as well as for the purpose of maintaining an equitable competition, were conferred upon both routes by Parliament, and are contained in the Caledonian and Scottish Central Amalgamation Act, 1865 (28 & 29 Vict., cap. 287, ss. 87, *et seq.*), and in the North British and Edinburgh and Glasgow Railway Companies Amalgamation Act, 1865 (28 & 29 Vict., cap. 308, ss. 38, *et seq.*), and upon this principle whenever either party has directly or indirectly promoted or been party to the promotion of any line in extension of its own system, the competing companies have always been allowed a *locus standi* to obtain equal facilities. Thus, in 1879, an Act was passed for making a railway from the South Alloa branch of the Caledonian railway to Alloa. The bill for that Act, *Alloa Railway Bill*, 1879 (2 Clifford & Rickards, 134), was promoted by independent persons, who sought to make a little railway across the Forth to join the Caledonian. It was not

authorised in the hands of the Caledonian company, but it was obvious that they must ultimately become the workers of the line if made, and there were powers taken in the Act that they should have power to agree to work. The East Coast companies petitioned against the bill on the ground that although it was not an actually direct extension of the West Coast route and therefore not *totidem verbis* in actual breach of the clauses of the Act of 1865, or coming within them, it was so practically, and that they ought to be admitted to be heard as to the extension of those facilities to that line. Accordingly they were so heard, and clause 39 of the Alloa Railway Act, 1879, provides that the several facilities, powers, privileges, and provisions by the Act of 1865 granted and secured as regards East Coast traffic shall, if and so long as the railway is worked by the Caledonian company, extend and apply to the railway in all respects as if it had been a railway in extension of or connected with the Scottish Central railway belonging to or leased by the Caledonian company. The same principle and arguments apply to the claim of the petitioners to be heard in the present instance. In 1882, again, when an independent company came before a Committee of the House of Lords for a little extension of the Callender and Oban line down to Loch Tay, the East Coast companies were allowed a *locus standi* in order to obtain a protective clause. The line proposed by the present bill, against which we seek to be heard, is a line of about 30 miles from Alloa, running along the river Forth towards the south across the kingdom of Fife and terminating at Kirkcaldy, and it is obvious that the only purpose of this line across Fife is to take the Caledonian railway there. We ask therefore that here, in respect of that which is an extension of the Alloa line, the same thing shall be done as was done in respect of the Alloa line itself in 1879, and in respect of the extension of the Callender and Oban line in 1882, viz., that it shall be enacted that this extension, if and so long as worked by the Caledonian company, shall be deemed to be one of those extensions to which the facilities ought to apply. We also claim a general *locus standi* on the ground of competition. At present the kingdom of Fife is absolutely under the control of the North British railway company, and all the traffic arising in the kingdom of Fife would be forwarded by the North British over the Forth bridge and would reach the East Coast companies. If, however, the line proposed by the bill is authorised, and if, as no doubt it would, it passes into the hands of the Caledonian company, then, for the first

ne, the Caledonian company, that is to say, a West Coast route, will have pierced the kingdom of Fife, and will take so much of the traffic as it can get, not over the Forth bridge, which the East Coast companies are interested, but by way of Alloa over their own line, and away by Carstairs to Carlisle and so over the London and North-Western to London.

Pember, Q.C. (for promoters): With regard to the claim of the petitioners for a *locus standi* to obtain protective clauses, the precedents laid upon of 1879 and 1882 were not parallel cases. The Alloa line of 1879 ran out of the Scottish Central line, going up to a place called near Alloa, on the south bank of the Forth. The way the traffic was carried before 1879 was northwards along the Scottish Central South Alloa branch, and then by a ferry over the Forth to Alloa, and so on. In 1879 an independent company nominally came to make a branch with a bridge over the Forth from the South Alloa Scottish Central line (the Scottish Central being worked by the Caledonian), to supersede for all practical purposes of through traffic the old South Alloa branch and the ferry.

It was then argued on behalf of the East Coast companies, that that new little branch out of the Scottish Central to Alloa, if not a line owned and leased by the owners of the Scottish Central within the exact words of the Act of 1865, was at all events colourably so, and sure so to become, and that the line itself was in substitution for a bit of Scottish Central line, and a improvement upon the Scottish Central route by the substitution of a bridge for a ferry. On these grounds, Parliament granted the East Coast companies similar facilities to those granted in 1865, but imposed the qualification contained in the words, "if and so long and so often as the railway shall be worked by the Caledonian company." With regard to the other precedent, viz., the Callender and Oban Bill of 1882, the Callender and Oban, though an independent line in point of form, is no doubt practically Caledonian. They have subscribed largely to the construction of it, and they work it, if not in perpetuity, on a very long lease. In 1882 the Callender and Oban company, acting in their capacity as an independent company, although no doubt in harmony with the Caledonian company, their workers, came for a little line to branch off their own line to Killin or Loch Tay. The East Coast companies again claimed to be heard against that line, in order to obtain facilities over it as a spur of the Scottish Central; and, as it was avowedly to be subscribed to and worked by the Caledonian company, who were working the Callender and Oban railway, the Committee gave them the facilities

they asked. The present case is totally different, this being an absolutely independent line, and there being no power for the Caledonian to subscribe to it at all. It is not in substitution as the Alloa line was, of a bit of Scottish Central; it does not form any new route to the North of Scotland, and will merely serve local needs from Alloa to Kirkcaldy, where it stops at a dead end, although it undoubtedly makes a junction at Alloa with the existing Alloa line, and so gives an opportunity to people who live at Kirkcaldy, and intermediate places between Kirkcaldy and Alloa of going southwards. It cannot be maintained that a line going round the coast and stopping at Kirkcaldy without touching the Scottish Central system is an extension of that system, and the petitioners are therefore not entitled to be heard in order to obtain traffic facilities over it, as in the case of the bills of 1879 and 1882. Then, as regards the question of competition, the railway in competition with this line is the North British, who have presented a petition and will be heard. Further, the claim to be heard against the construction of the railway on the ground of competition is entirely inconsistent with that of asking for facilities over it when constructed.

Pope: If the Court is of opinion that the petitioners are entitled to be heard on the ground of competition, that would give them a general *locus standi*, but if the *locus* is limited, the petitioners would ask it to be limited in the terms of the limitation of 1879.

The CHAIRMAN: We think we must limit the *locus standi* of the petitioners in the same way in which it was limited in 1879.

Locus standi of the Petitioners Allowed in order to enable the petitioners to contend that the facilities granted by the Act of 1865 should be extended to the line proposed by the bill.

Agents for Bill, *Martin & Leslie*.

Agents for Petitioners, *Nelson, Barr & Nelson*.

BALLINA AND KILLALA RAILWAY BILL.

Petition of COMMISSIONERS FOR IMPROVING THE NAVIGATION OF THE RIVER MOY.

1st May, 1883.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE-PALMER, M.P.; Mr. PARKER, M.P.; and Sir F. S. REILLY.)

Practice—Petition adopted at Informal Meeting—Ratification of, at subsequent Meeting, insufficient—Statutory Requisition and Notice of

Meeting not observed—Commissioners Clauses Act, 1847 (secs. 45 & 47.)

A petition against a railway bill was adopted by a majority of certain Navigation Commissioners in Ireland, constituted under statute, at a special meeting convened for the purpose. It was objected that the petition was invalid, the meeting at which it was adopted having been called by summons from the clerk, without either the requisition or the notice required by the Commissioners Clauses Act, which was incorporated with the special Act. An attempt had been made at a subsequent meeting of the commissioners to cure this defect by a resolution which instructed the solicitor to "continue his opposition to the objections of the promoters" upon the question of *locus standi*, "and also before the Committee."

Held, that the *locus standi* must be disallowed, the petition being invalid because adopted at an informal meeting, and the subsequent resolution being a mere instruction to the solicitor and not a ratification.

The *locus standi* of the petitioners was objected to (*inter alia*), because the special meeting, held on April 7, at which the petition was adopted, had not been convened by a requisition signed by five or more of the commissioners as required by sec. 45 of the Commissioners Clauses Act, 1847, incorporated with the petitioners' Act of 1860, nor had two clear days' notice, at least, been given of the meeting, as required by secs. 45 and 47 of the said general Act; but the meeting was called by notices delivered or sent by the clerk on the evening of April 6.

Pembroke Stephens, Q.C.: This is the "petition of the commissioners for carrying into execution the Act for the improvement of the navigation of the river Moy, signed pursuant to a resolution passed at a meeting of that body on the 7th day of April, 1883." Dealing first with the technical objection, it is not denied that there was a meeting, attended by a quorum of the commissioners, nor can there be any doubt of the title to a *locus standi* upon the merits.

Sir F. S. REILLY: Do you dispute the allegations contained in the notice of objections upon this technical point?

Stephens: I am not in a position to dispute them, and will deal with them upon the assumption that they are true.

The CHAIRMAN: Did a majority of the commissioners sign the petition?

Stephens: The total number is 15; the petition is signed by six.

Greig (for promoters): At the special meeting there was a division, when six were for the bill and three against it.

The CHAIRMAN: The petition is signed rather oddly. The first signature is "John Boylston, Chairman of the river Moy Commissioners;" then each of the other five petitioners calls himself "harbour commissioner." It looks like a petition of six individuals.

Stephens: It is signed pursuant to a resolution passed at a meeting of the commissioners, but no objection is taken to the signatures. As to the objection to the convening of the meeting, the Commissioners Clauses Act only regulates the proceedings of the petitioners so far as it is not inconsistent with the provisions of their special Act; and in the special Act is a clause providing that the commissioners shall hold their first and all other meetings at such times as may be decided on by them. I should argue that this section would take them out of the terms of the general Act. The Court, also, does not require the same strictness from trustees where they are doing an act in defence of their rights and interests, as it does if they are proposing to interfere with the rights and property of other people. This bill would have the effect of taking away the trade, and rendering useless all the outlay of this public body; and their attempt to protect their property will therefore be viewed with indulgence. Then there has been a ratification here; and according to precedent, this would cure any defect of form in the petition. (*Glasgow Court-Houses Bill, Petition of Parliamentary Bills Committee of Commissioners of Supply of Lanarkshire*, 1 Clifford & Stephens, 160.) The special meeting was held on April 7. On the 21st there was another meeting of the commissioners, when it was resolved that our solicitor do continue his opposition to the objections raised by the promoters as to the question of our *locus standi*, and also before the Committee to whom the bill may be referred, for the accomplishment of the object already agreed upon by us." This meeting was duly convened, and a quorum was present.

The CHAIRMAN: All they did at the meeting was to strengthen the hands of their solicitor.

Stephens: They say distinctly they are here "for the accomplishment of the objects already agreed upon by us." If the petition was originally informal, you have here a recognition and substantial adoption of it by a competent meeting.

The CHAIRMAN: I do not think the resolution

you have read amounts to a ratification of the petition. It does not refer to the petition. To meet the objections that the meeting had been improperly called, the commissioners might, if they had chosen, have called a fresh meeting to ratify the petition, in place of which they merely resolve to continue their opposition to the objections, without attempting to confirm the resolution passed on April 7.

Stephens: People in distant parts of Ireland cannot be expected to know exactly what is required in order to bring themselves within the technical rules which this Court applies; but the resolution of April 21 may be understood, and was surely meant, as a distinct instruction to the solicitor of the commissioners to appear in support of their petition, both in this Court and before the Committee. This is a highly technical objection.

Sir F. S. REILLY: It is one founded upon statute.

Stephens: But the general Act may be taken as varied by the section in the special Act as regards the mode of convening meetings.

Sir F. S. REILLY: That section will hardly apply to special meetings.

The CHAIRMAN: Nor does it say that the notice required under the general Act may be varied.

Stephens: Cases occur every session in which public bodies in Ireland promote bills for which they have not obtained the assent of the rate-payers in the manner provided by the Commissioners Clauses Act. Objection is raised that they are proceeding illegally. The answer is: "The Courts are open to you; go and get your injunction and stop them." If that argument is good for promoters, it is equally good for petitioners. So here we may say, "if we are acting illegally, let the promoters go to the Courts and restrain us from proceeding."

Sir F. S. REILLY: In the case of the promotion of a bill, it might well be said that "the objection on the ground of illegality comes too late now that we are in Committee; it should have been made on second reading;" but in this case the objection is legitimately taken here, and, in fact, can only properly be taken here.

The CHAIRMAN: The difficulty I feel is that the general Act says you shall call a meeting in a particular way, and unless it is called in that way there shall be no meeting. Thus there has been no legal meeting, and since April 7 the commissioners have really done nothing to meet the objection.

Stephens: Having regard to the fact that a meeting was held, at all events with the intention of confirming the resolution passed on

April 7, will the Court grant the petitioners a *locus* conditional upon the distinct confirmation of the resolution and the ratification of the petition by a properly convened meeting? A Committee of the House of Lords has just allowed a bill to proceed conditionally upon proof of the consent of the Grand Jury being obtained. Similarly the Court might say here: "*locus standi* disallowed, unless within a certain time proof be given that the petition is adopted by the commissioners." We should then be able to give evidence of undoubted ratification, and the Court would be acting within its discretion in allowing us this opportunity to cure any technical defect in our petition.

Mr. PARKER: Do you know of any case in which there was ratification of a petition after the case had been before this Court?

Stephens: I cannot refer to any such case, but it frequently happens in Irish bills that, as Grand Juries only meet at fixed times of the year, certain persons petition on their behalf at the time when it is necessary that a petition should be lodged; and then, when the Grand Juries meet, they ratify the petition, or adopt a supplementary and formal one. It would be a great hardship if upon technical grounds we were shut out in a case of this sort. Even if you regard this as a petition of individual commissioners, the question is whether, in the absence of a petition from any other body, the petitioners are not entitled to be heard.

The CHAIRMAN: I fear we cannot get you out of the difficulty you are in.

Locus Standi Disallowed.

Agents for Bill, *Holmes, Anton & Greig.*

Agents for Petitioners, *Bircham & Co.*

BARRY DOCK AND RAILWAYS BILL.

Petition of (1) RHYMNEY RAILWAY COMPANY.

30th March, 1883. — (*Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE-PALMER, M.P.; Mr. PARKER, M.P.; Mr. MELDON, M.P.; Sir F. S. REILLY; and Mr. BONHAM-CARTER.*)

Railway and Docks, Construction of—Competition—Diversion of Traffic—Existing Railway Company, under Statutory Agreements with existing Dock Company—Alleged Disturbance of Legislation of previous Session—Alteration in Status of Petitioners—Running Powers—S. O. 133—General Locus claimed under—Power of Agreement with other Railway Com-

panies, how far affecting Petitioners—Sufficiency of Allegation of Injury—Practice.

The bill authorised the construction of docks at Barry upon the Bristol Channel, and of a railway in connection therewith. The petitioners claimed to be heard against the entire scheme (including the construction of docks, as well as of a railway) (1) on the ground of competition and diversion of traffic, aggravated by the fact that the petitioners had, in the previous Session, entered into statutory agreements for interchange of traffic with the Bute docks at Cardiff, a short distance from Barry, which agreement, they alleged, would be affected by the bill; (2) on the ground that the promoters took running powers over a small portion of their line, upon which ground, such running powers being, as they maintained, an essential part of the whole scheme, they also claimed a general *locus standi* under S. O. 133; (3) on the ground that the promoters took permissive powers under the bill to enter into an agreement for working, maintenance, &c., not only with the petitioners themselves, but also with other railway companies in competition with the petitioners, under which powers of the bill the petitioners maintained that it would be possible, under certain circumstances, that all traffic now passing over their railway to the Bute docks at Cardiff might be diverted by the promoters:

Held (apparently on the ground of competition), that the petitioners were entitled to a general *locus standi* against the bill.

The *locus standi* of the petitioners was objected to, because (1) paragraphs 1 to 21 inclusive of the petition contain various objections to the bill, but the ground upon which the petitioners base their right to be heard is, in substance, that they are carriers of traffic now going to Cardiff, which will or may, if the proposed railway and dock be authorised, be carried to Barry; (2) the proposed railways and dock will not set up any such competition with the petitioners for the conveyance of traffic as entitles them to be heard according to practice; (3) as regards paragraph 22 of the petition, the

promoters deny that clause 80 of the bill will confer on the promoters any power to run over work and use any part of the railways of the petitioners, but they do not object to the petitioners being heard against so much of the said clause, if any, as may authorise them to run over and use any part of the railways and works of the petitioners; (4) as regards paragraph 23 of the petition, the powers proposed to be conferred on the petitioners do not entitle them to be heard against the bill, inasmuch as those powers cannot be ultimately passed without the acquiescence of the petitioners at a special meeting. As regards the powers proposed to be conferred by the said clause upon the other companies therein named, such powers will not affect the petitioners in any manner entitling them to be heard against the bill; (5) the petition discloses no ground for a hearing according to practice.

Bompas, Q.C. (for petitioners): The bill is one, not only for making large docks at Barry, in the neighbourhood of Cardiff, but for making extensive railways alongside the Taff Vale leading up to the Rhondda Valley and the Aberdare Valley, and the other principal valleys in South Wales. We claim a general *locus standi* (1) on the ground of competition; (2) on account of the running powers which the bill proposes to give over our line; (3) on account of the unlimited powers which the bill confers upon the promoters, of selling themselves to one of our rivals, and making whatever agreements they choose with those rivals. With regard to (1), competition, roughly speaking, the present railway system in this part of Wales is a system for conveying coal and iron from the various valleys down to the Bristol Channel for shipment, and the three main railways which constitute that railway system are the Rhymney, the Taff Vale, and the Great Western. The dock and railways proposed by the bill are solely designed to divert traffic, which now goes to Penarth and the Bute docks at Cardiff, and is brought there in great part by the railways of the Rhymney company. Our main line runs from Rhymney to the Bute docks at Cardiff, but in addition, we own, either solely or jointly with other companies, a number of branches connected with our main line, and also possess running powers over several of the railways in the district, including the Pontypridd, Caerphilly and Newport railway now in course of construction, by means of which railway the whole traffic of the Rhondda and Aberdare Valleys will be opened to us. In view of these and similar powers, we have constructed an elaborate system of sidings and other works at Cardiff for the purpose of providing convenient

accommodation for the traffic to and from the port, and have entered into various agreements with the Marquess of Bute and his trustees, and undertaken heavy obligations in order to provide for the convenient interchange of traffic, and for the export and import of all sorts of traffic. In the Session of 1882, we obtained parliamentary powers for an extension of our system in the Taff Valley, with powers to raise £300,000 additional share capital, and to borrow £100,000, with a view to improve communication between that portion of the South Wales coalfield and the port of Cardiff. The whole subject of the dock and railway accommodation of Cardiff was fully discussed and decided by Parliament in that session, and powers were given by the Bute Docks Act, 1882, to the Marquess of Bute and his trustees for the construction of the new dock, which is now being constructed. In consideration of the construction of that dock, we entered into onerous agreements with the Marquess of Bute and his trustees, which agreements were also sanctioned by Parliament in the last session. The present bill is therefore in effect an appeal from the decision of Parliament in last session, by which decision our *status* in this district was determined. Not only therefore will the proposed railways and dock seriously compete with our railways and abstract the traffic which we should otherwise carry to the docks at Cardiff, but the bill is a disturbance of our rights as settled by the legislation of last session. Apart from the question of competition, aggravated by the settlement of last session, we claim to be heard on (2) the question of the running powers proposed by clause 80 of the bill. Clause 80 enacts "that the company" (i.e., the promoters) "and any company or persons for the time being working or using the railways of the company or any part thereof, either by agreement or otherwise, may run over, work, and use with their engines, carriages and waggon-
sons of every description, and with their clerks, officers, and servants, &c., the railways or portions of railways hereinafter described." Those portions of railways include among others, so much of the railways belonging to us, as will give access from the termination of the proposed Railway No. 4 to our railway and sidings at Walnut-Tree bridge junction on the Rhymney and Taff Vale railways.

Jones : As far as regards running powers, we concede that the petitioners are entitled to a *locus standi* limited to any question of running powers.

Bompas : I contend that those running powers give us a general *locus standi*. In the case of an omnibus bill the *locus standi* might be properly limited to the particular part of

the country to which the running powers applied, but where you have one complete scheme, part of which is that the promoters should have running powers over us, and where the effect of striking out those running powers over us would be to throw the whole traffic into the hands of our rivals, and prevent our having any share of the traffic whatever, I submit it would be monstrous to limit our *locus standi* to the particular question of those running powers without allowing us to go into the broad question whether the whole scheme of which they are part should be authorised. I contend that S. O. 133 gives in terms a *locus standi*, general where the allegations in the petition cover the whole bill, and limited where the allegations are directed against special provisions of the bill.

The CHAIRMAN : I do not think we have ever read the S. O. in that way.

Bompas : The S. O. is ambiguous, and is capable of bearing the construction which I contend for, and if so, there could not be a stronger case than this for granting a general *locus standi*. I lay stress upon the fact that clause 80 gives running powers not only to the new company but to every company that uses any part of the new company's line. Lastly, we object to clause 82 of the bill, which proposes to enable the company on the one hand and the Great Western and Taff Vale companies and the petitioners on the other hand to enter into agreements for the working, use, management, and maintenance of the intended dock and railways or any part thereof, and the supply of engines, rolling stock, &c. This clause would enable them practically to sell themselves to our rivals, the Taff Vale company, and place the entire traffic in their hands without our being heard in the matter.

Sir F. S. REILLY : With regard to any anticipated injury to be done to you by the power proposed to be given to the promoters in clause 82 to agree with your rivals, would you not be to some extent protected by Part III. of the Railways Clauses Act, 1863, which makes all such agreements subject to the revision and approval of the Railway Commissioners?

Bompas : That might be so, but it has been decided by this Court that making such agreements subject to the provisions of a general Act does not deprive petitioners of a *locus standi* to oppose the power to enter into such agreements. (*Thames Deep Water Dock Bill, on the Petition of Owners, &c., of Legal Quays, 3 Clifford & Rickards, 236.*) We claim a general *locus standi* against the bill, that is to say, against the construction of both the railways and the dock.

Jeune (in reply): The proposed Barry dock will not be at Cardiff, to which the Rhymney railway goes, but at a place five miles distant, and as regards the claim to be heard against the docks part of our scheme as well as the railway part of it, in no case has a railway company been allowed to be heard against the making of docks on the ground of abstraction of traffic. As to the claim of the Rhymney company to be heard in respect of the running powers which we seek to exercise over their line, we only seek to run over a very small portion of siding at Walnut-Tree junction; therefore it is as small a case of running powers as possible, and in no such case has a general *locus standi* ever been allowed. We concede that the Rhymney company have a right to be heard against clause 80, to the extent that that clause seeks to take running powers over the Rhymney railway, but no further. As regards the power given by clause 82 for the company to enter into agreements with other companies, including the Rhymney company, of course that would not give a *locus standi* to the Rhymney company, because the power is only permissive, and the giving of a permissive power does not give a *locus standi*; but as regards the permissive power to other companies as to which it possibly might be said that the Rhymney company were entitled to a *locus standi*, there is no allegation in the petition that the entering into those agreements would be prejudicial to the Rhymney company.

The CHAIRMAN: The petition says that the powers might be used unfairly and oppressively against them.

Jeune: They do not say in what conceivable way they could be so used. I do not see how it would be possible for the Taff Vale company to make any agreement with the Barry company which could in any way interfere with the Rhymney company. The Taff Vale company are already competitors with the Rhymney company to Cardiff, where are the very docks to which the Rhymney company goes. If the Rhymney company are entitled to a *locus standi* at all it ought to be limited to so much of the bill as enables the Barry company to make agreements with other companies.

The CHAIRMAN: We think the Rhymney company are entitled to a general *locus standi* against the bill.

Locus standi of the Rhymney Railway Company Allowed generally.

Agents for Petitioners, *Wyatt, Hoskins & Hooker*.

Petition of (2) PONTYPRIDD, CAERPHILLY AND NEWPORT RAILWAY COMPANY.

Railways—Competition—Diversion of Traffic—Railway forming Link in Chain of Communication—Right of Two Companies forming through Route to be heard Separately—Distinction of Termini, how affecting Question of Competitiveness of Traffic.

The bill was further opposed by the Pontypridd, Caerphilly and Newport railway company, who also claimed to be heard on the ground of competition and diversion of traffic against so much of the bill as related to the construction of railways. They claimed to be heard (1) as forming a link in the chain of railway communication between the Rhondda Valley and Cardiff, the remaining portion of the route being formed by the railways of the Rhymney company. They complained that not only were the railways proposed to be authorised by the bill in competition with their own, but that power was given to the promoters to form junctions with the Taff Vale company, by which means the latter company would be enabled to carry on a fresh competition with themselves to Cardiff. The petitioners further claimed a *locus standi* (2) on the ground that the bill would divert traffic now carried over their railway to the docks at Newport. It was contended on behalf of the promoters (1) that the petitioners formed only a small link in the chain of communication between the Rhondda Valley and Cardiff, as to which route the Rhymney company were the proper parties to be heard = (2) that the Barry docks, to which traffic now going to Newport might in future be consigned, would be too remote from those at Newport to enable the petitioners to support their claim to be heard on this part of their petition:

Held, however, that the petitioners were entitled to be heard generally against the construction of railways authorised by the bill.

The *locus standi* of the petitioners was objected to, because (1) the only grounds upon which the

base their claim to be heard against that it contains powers enabling the to abstract and divert traffic from the the petitioners, to establish a severe as competition, and cause loss and the petitioners; (2) the promoters the proposed railways and works, if will set up such a competition as petitioners to be heard; (3) it is in ed that the petitioners (when their re completed) will be entitled to c between the Rhondda and Aberdare d Newport and Cardiff, but the object is not to compete with the petitioners of the carriage of traffic either to : Cardiff; (4) there is nothing alleged ition entitling the petitioners to be rding to practice.

C. (for Pontypridd, Caerphilly and ailway company): The Pontypridd, and Newport railway gives access to of the Rhymney company to the Valley, which, before our line was was exclusively the district of the railway company. The proposed re to some extent parallel with our hose of the Rhymney company, and junctions with our competitors, the company. Prior to 1878, when the railway was authorised, the whole e Rhondda Valley necessarily passed Taff Vale railway to Cardiff, with ion of what might be exchanged at e junction close to Cardiff on to the railway to be carried by them to that the Bute docks, to which they have ccess. Our line will, when completed, reighter in the Rhondda Valley for ne to send traffic destined for a port stol Channel, not only over the Taff onarth or Cardiff, but also over our e Rhymney line to Cardiff; or on the he may send it on by means of the d Merthyr Tydfil railway to New- line therefore forms not only an link in the chain of communication, e Rhymney line is another link, be- Rhondda Valley and Cardiff, but also arge amount of traffic destined for In order to facilitate the conveyance rom the Rhondda Valley to the ports and Newport, the Rhymney company ag powers over the Pontypridd, Caer- Newport railway up to Pontypridd where they come to the outlet of the Valley; and on the other hand the , Caerphilly and Newport have reci- ing powers over the Rhymney down The Pontypridd, Caerphilly and

Newport in like manner have reciprocal running powers with the Brecon and Merthyr Tydfil company, the Brecon and Merthyr coming to Pontypridd for their traffic if they like. The object of Parliament in sanctioning our line was to open up between the Rhondda Valley and Cardiff and Newport a competitive route against the Taff Vale monopoly which had previously existed. The railway proposed by the bill forms a junction with the Taff Vale railway at two places, one being Treforest, and if the promoters were to form an alliance with the Taff Vale and give them running powers down to Barry, and at the same time were to abandon the higher portion of their line up the Rhondda Valley, the Taff Vale would be able to take down to the Barry docks all the traffic, which would otherwise pass over the Pontypridd, Caerphilly and Newport line, either via the Rhymney to Cardiff, or directly on to Newport. How can it be said that our railway, which has now been nearly completed at enormous cost, through the range which separates two great valleys, in order to connect the Rhondda system with the Rhymney and with Newport, has no competitive interest entitling us to object to another company coming into the Rhondda Valley and taking that traffic away from us to another point, that point being docks in competition with the docks to which we convey traffic? The petitioners, however, are content to be heard against so much of the bill as deals with the construction of railways, without opposing the dock part of the scheme.

Jeune (for promoters): Dealing first with the claim of petitioners (2) to be heard against the railway proposed by the bill, the Pontypridd, Caerphilly and Newport is mainly a railway communicating between the Rhondda Valley and Newport; but the remoteness of Newport from Barry prevents the petitioners from setting up a case of competition between Newport traffic and Barry traffic. Both Newport and Barry are on the Bristol channel, but they are totally different places; and although it is conceivable that if the new line is constructed, traffic which might at present go by the petitioners' railway to Newport would be taken to Barry, that is not a kind of competition which would entitle the petitioners to a *locus standi*. It is necessary, in order to create a real case of competition between railways, that both the *terminus a quo* and the *terminus ad quem* should be identical. Here the *termini ad quos* are too remote to allow of substantial competition.

The CHAIRMAN: Coal from Pontypridd junction or from Treforest to Newport would be carried over the Pontypridd, Caerphilly and

Newport line, while if this new line were made, some of that coal might, and very probably would, be carried over the new line to the Barry dock. With regard to distance between Barry and Newport, if you abstract the traffic, it does not much matter where you take it to.

Jeune: As to the claim of the Pontypridd, Caerphilly and Newport to be heard as forming a link in the chain between Cardiff and the Rhondda Valley, which the Rhymney company by running over can utilise, the link is a small one, and the Rhymney company are the persons who really represent the interests affected, and are the proper parties, if any, to be heard. The petitioners in one case own the line run over; the others are the people who run over the line, but their interests are identical.

The CHAIRMAN: I think we have often allowed two sets of petitioners representing the same interests to be heard. One of the parties might be bought off or agreed with. We think that the petitioners are entitled to a general *locus standi*, so far as the construction of the railway is concerned.

Pope: It will not be necessary to specify the clauses, as our petition, by which we shall be limited, does not say a word about docks.

Sir F. S. REILLY: The term "construction of the railway," does not mean merely the physical construction.

Pope: We understand it to mean the policy of authorising the railway.

Locus standi of the Pontypridd, Caerphilly and Newport Railway Company Allowed as against the railway part of the scheme.

Agent for Petitioners, *Bell*.

Agents for Bill, *Dyson & Co.*

BIRMINGHAM CORPORATION (CONSOLIDATION) BILL.

Petition of (1) HENRY HAWKES AND OTHER RATEPAYERS.

18th March, 1883.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE-PALMER, M.P.; Mr. MELDON, M.P.; Mr. PARKER, M.P.; Sir F. S. REILLY; Sir JOHN DUCKWORTH; and Mr. BONHAM-CARTER.)

Alleged Informality before Application to Parliament for Bill—Town Council—Ratepayers—Public Meeting—Corporate Seal—Representation—Court will not entertain Question of Ultra Vires.

Certain ratepayers of a borough asked to be heard against a bill promoted by the town

council, on the ground that the formalities required by law to be observed before the town council of the borough could promote a bill in Parliament had not been complied with in the present instance; and the petitioners claimed a *locus standi* in order to enable them to take this preliminary objection to the bill before the Committee to whom it was referred. The corporate seal had been affixed to the petition for the bill, and the question of the legality of this act had been raised in a court of law, and was then *sub judice*:

Held, that the Court could not entertain the question of whether the corporate seal had been properly affixed, or deal with the allegations of the petition, and *locus standi* of petitioners accordingly disallowed.

The *locus standi* of the petitioners was objected to, because (1) no lands or property, rights or privileges of theirs will be interfered with, nor (2) will they be prejudicially affected by the bill; (3) they are only seven out of many thousand ratepayers and burgesses of the borough, and having no special interest in relation to the bill before Parliament are covered by the corporate seal; (4) they complain not against the bill, but against the application for the bill, and their petition therefore is irregular; (5) notwithstanding the allegations contained in the petition, the promoters allege that the meeting and poll therein referred to were duly held and taken; (6) the legality of the meeting and poll is questioned in certain legal proceedings instituted by the petitioners or some of them, and those proceedings are now pending; (7) they have no ground for a hearing according to practice.

Ledgard (for petitioners): The Birmingham Improvement Act, 1851 (14 & 15 Vict. sec. 63), provides that no application shall be made to Parliament by the council of the borough for further powers, or for power to raise further sums of money, without the consent of a meeting of ratepayers, and, further, "that if a poll shall be demanded at the said meeting in respect of any question, it shall be open to all the ratepayers within the borough, during a period of three days next following the holding of such meeting, to signify their votes in writing in respect of such question, and the same shall be decided by the majority of votes so signified." In accordance with the above provision, the Mayor of Birmingham held a public meeting on December 11th,

obtain the authority of the rate-apply to Parliament for the present at that meeting the majority refused such authority, but the Mayor, as , erroneously stated that the majority favour of the application, whereupon oners demanded a poll, and the Mayor d that a poll would be taken on the h. and 14th December, but in conse- f the insufficient provision made by or for taking such votes, many of ratepayers were deprived of the ty of voting on the question, and colorable majority of votes in favour olution, amounting to 266 votes out of es recorded, was gained.

C. (for promoters): The question has re the Courts, and is now *sub judice*, e decided in a few days.

IRMAN: The petitioners cannot be ainst the corporate seal. If the seal was properly affixed there is an equestion, but this is not the Court to urther it was properly affixed.

l: We do not wish to raise the legal but to be in a position to take a pre- objection, before the Committee, to the eding.

3. REILLY: Your objection amounts to this bill ought not to be in Parlia- ll.

IRMAN: Would not the proper course y to the Chancery Division to restrain sters from going on with the bill?

l: It is necessary before doing that to f of the Attorney-General, which een done, and in the meantime the become law.

IRMAN: The Court is unanimously of at it is impossible for us to deal with m, or make any decision upon it. If rate seal is properly affixed, the i are excluded, but it is not for us to er it has been properly affixed or present we assume that it has been. wed the *locus standi* we should be t the seal was improperly affixed. andi Disallowed.

for Petitioners, Robinson, Preston &

(2) THE ASTON MANOR LOCAL BOARD
EDIANs OF THE POOR OF KING'S NOR-
d (3) WEDNESBURY AND DARLSTON
OARDS.

S. O. 134a.—*Jurisdiction of Referees*

ousted by—*Local Authorities—Consolidation Bill—Right of Petitioners to be heard Against.*

The bill was an omnibus bill for consolidating all previous Acts relating to the borough of Birmingham, including an Act passed in 1875 by which the corporation acquired the right to supply gas and water within the limits of the Act. The petitioners were local authorities outside the borough, but within the limits of supply by the corpora- tion, and they claimed to be heard against the bill generally as affecting their rights, but more especially in reference to the provisions of the bill relating to the gas and water supply, under the terms of S. O. 134a.

It was laid down by the Court, that inasmuch as in compliance with S. O. 134a, the petitioners alleged in their petitions that their districts might be injuriously affected by the provisions of the bill relating to the lighting or water supply thereof, or the raising of capital for any such purpose, the petitioning local authorities were abso- lutely entitled to a *locus standi* under that S. O., as to which the Referees had no juris- diction or discretion.

On other points not relating to gas or water supply, or the raising of capital for such purposes, and therefore not covered by S. O. 134a, it is still competent for the Court to consider the right of petitioners to be heard, although in the present case the rights of the petitioners were limited by the allegations in their petitions, which re- ferred only to gas and water.

(*Per Cur.*) The fact that a private bill is a con- solidation bill does not appear to debar petitioners from being heard on the ground that they are complaining of past legislation, any more than discussion is prohibited upon a public consolidation bill, in which case Parliament proceeds upon the principle that the whole subject is re-opened.

The *locus standi* of the petitioners (2 and 3) was objected to, because (1) no lands or pro- perty, rights or privileges of theirs will be

taken or interfered with; (2) so far as the petitioners are concerned the bill re-enacts or preserves their rights, powers, and privileges; (3) in the session of 1875 when the bill for the Birmingham (Corporation) Gas Act was pending in Parliament, full enquiries were made before the Committees to whom the bill was referred, and the claims of the local authorities and consumers of gas outside the borough were discussed and settled, and the promoters purchased the gas undertaking upon the terms set forth in the said Acts, and it would be unjust and unreasonable now to revise or alter such terms and conditions; (4) most of the complaints contained in the petition are complaints in respect of past legislation with regard to which the petitioners are not entitled to be heard; (5) the petitioners do not represent the persons manufacturing and trading in gas fittings, pipes and tubes, and other persons interested in such businesses referred to in the petition; (6) the petitioners are not entitled to, or interested in the revenue arising from the said gas undertaking; (7) they are not entitled to be heard according to practice.

O'Hara (for petitioners (2 and 3)): The petitions are practically identical and may be taken together. Although the bill is not one seeking new powers, it is a bill seeking a re-enactment by Parliament, and a renewed acquiescence of Parliament in, all the provisions that are contained in the existing Acts with certain amendments, and it is a re-affirming of what was enacted in 1875. Suppose that by the Act of 1875 an individual had suffered a grievous wrong, would it not be competent for that individual to petition Parliament to redress that wrong by refusing to re-enact the provision that caused it? On the same principle the petitioners are entitled to be heard against this consolidation bill. But further, S. O. 134a is mandatory, and leaves this Court no discretion as to our *locus standi*. S. O. 134a declares that "the municipal or other local authority of any town or district alleging in their petition that such town or district may be injuriously affected by the provisions of any bill relating to the lighting or water supply thereof, or the raising of capital for any such purpose, shall be entitled to be heard against such bill." The terms of the S. O. do not admit of any discretion being left to the Court in the matter, and are in contrast with the discretionary power as to the exclusion of the petitioners or the limiting of their *locus standi* given by S. O. 130 and S. O. 134. In the case of the *South Metropolitan Gas Bill, on the Petition of the Metropolitan Board of Works* (3 Clifford & Rickards, 99), the same question came before the

Court. The petition of the Metropolitan Board of Works in that case had this allegation: "Your petitioners also submit that if the privilege of raising additional capital beyond the amount limited in the said Act of 1876 be conferred upon the company, it should be accompanied by a reduction in the standard price fixed by that Act." That was a complaint as to past legislation, which it is objected by the promoters we are doing in the present instance, and which the Referees had always previously decided was no ground for a *locus standi*. On that occasion the Chairman after some discussion stated that a proposition was going to be made to the House to enlarge the terms of the S. O. admitting the local authority to be heard in cases of this kind, and if the S. O. was so amended it might probably cover such a case, when it would be unnecessary for the Referees to hear it; and upon the passing of S. O. 134a, the objections to the *locus standi* of the Metropolitan Board of Works were withdrawn. This is the first case that has been argued since the passing of that S. O. Our petitions allege repeatedly that our districts are injuriously affected.

Sir F. S. REILLY: That, as it seems to me, brings you within the S. O. and gives you an absolute right to be heard before the Committee without any decision of this Court.

Pope, Q.C. (for promoters): Admitting that these petitioners are the local authorities, I submit that they must show that they are injuriously affected by the provisions of the bill before they can be entitled to be heard, and I say further that the words in the S. O. "heard against the bill," admit of the interpretation, "heard against such portions of the bill as affect the petitioners," and that they do not mean against the whole bill.

Sir F. S. REILLY: The simple question is whether the terms of the Order are not such as to deprive this Court of all jurisdiction on this question; whether, in fact, this present proceeding is not *coram non iudice*.

Pope: If a mere allegation is sufficient to entitle the petitioners to be heard *adit questio*, and this Court has no jurisdiction to decide one way or the other: but if my construction of the words which Parliament has used in the S. O. is right, viz., that a qualified petitioner must satisfy the Court that he is a party who may be injuriously affected, and further that the mandate is that he is to be heard, not necessarily against the whole bill, but against such part of the bill as affects him, then your jurisdiction would arise to define against what part of the bill the imperative mandate entitles him to be heard. S. O. 89 thus defines the duties of the Referees, "The Referees shall decide upon all

against private bills, or against Provisions, or Provisional Certificates, &c., as of the petitioners to be heard upon them," and acting upon that S. O. 89 ways been in the habit of ascertaining whether a petitioner had the right to be heard against any bill, not merely ascertaining whether the petitioner was a landowner, but whether he was injuriously affected by the provisions of the bill. It is not sufficient for a petitioner to allege that he is a landowner and is traversed in the notices of objection; if he is traversed of course the allegations in the notices are assumed for the purposes of the bill to be correct, but if traversed there would have to satisfy this Court that the petitioner was a landowner whose land was taken or was under the provisions of the bill. The Court is satisfied that the petitioners in the descriptive words of S. O. 134a, do allege that they are injuriously affected, and if the Court is satisfied of the truth of the allegation, then the mandate is that they must be heard, but not against the whole bill. Supposing that they derived their right to be heard from the practice of Parliament in the case at present, but by virtue of this Court in compliance with such a practice to do what it has always been in the practice of doing, viz., refer to the provisions of the bill and see whether the allegation that the petitioner is a landowner may be injuriously affected by the bill is true or not. If found to be true or reasonably true, within the wide jurisdiction which this Court exercises upon questions of title, then a *locus standi* is given, and should turn out upon examination of the proposed plans and of the provisions of the bill that the landowner who made the allegation had no interest in any land that was affected by the bill, the Court would dismiss his *locus standi* upon the allegations of injury unsupported by facts.

CHAIRMAN: In that case the whole matter would depend upon the fact, and that dealing with the petitioner's claim to be heard has sprung up from the practice of Parliament and of Committees, but here the matter arises in another way. The House of Commons, not referring to any practice of Parliament or of this Court, has said that if any local bodies alleges that they are injuriously affected or may be injuriously affected they are to be heard.

The allegation of injury is equally true in the case of a landowner, but there the practice of the Court has always been, that if an allegation of injury is made, to

receive evidence of its truth if traversed. So here the true construction of this S. O. may be taken to be that the words "alleging that such town or district may be injuriously affected" are as much words of description as "landowners whose lands would be taken or injuriously affected," and that we are not merely at liberty to traverse the fact that these petitioners are a municipal or local authority, but to traverse the fact that they are a municipal or local authority who may be injuriously affected, and that they cannot bring themselves within the purview of the S. O. by a mere allegation, unless the allegation is founded substantially upon fact. It cannot be supposed that Parliament intended that anybody, even a corporation, should be able to bring itself into a Parliamentary contest in which it was not in fact in the slightest degree interested by saying, untruly, we are injuriously affected. Could, for example, the corporation of Manchester be heard against this bill of the corporation of Birmingham, because their petition contained an allegation that Manchester might be injuriously affected? The common-sense view in such a case would seem to be that, if it were traversed that the petitioning parties were within the contemplation of the S. O., this tribunal would be entitled to enquire whether the allegation that the petitioners were injuriously affected was true or not.

Mr. PARKER: What have you to say to this construction of S. O. 134a, that the House of Commons had so much confidence in these local authorities that it assumed that any allegations they made would be true, and that these allegations would show a sufficient *prima facie* case to entitle them to go before a Committee, who would deal with the thing upon its merits?

Pope: The presumption, unless the construction of the words compels an opposite conclusion, would, I submit, be the other way. The second point upon the S. O. is what is the true construction of the words "shall be entitled to be heard against such bill." The question that gave rise to this S. O. was the practice of the Court with regard to bills brought in by gas and water companies seeking to raise fresh capital, where it was objected that the local authority could not intervene to alter the initial price for instance. The new S. O. does not say that the petitioning authorities are to be heard against the preamble of the bill, and cannot be taken to mean that. In the present case as an example, it cannot be intended that the petitioning authorities are to be heard to re-open the whole discussion of 1875, including the acquisition of the gas and water undertakings by the corporation, in which year the rights and claims of the peti-

tioners were fully discussed and settled. The true construction of the S. O. must surely be, "shall be entitled to be heard against such bill, so far as it injuriously affects them," or taking the widest construction "so far as they allege that it injuriously affects them."

Sir F. S. REILLY: Their petition would limit them.

Pope: But their petition might and does, in the case of the Aston petition, contain an allegation that the preamble of the bill is untrue, and therefore I submit that the proper practice is for the Court to compare the allegations of the petitioners with the provisions of the bill, and to limit the *locus standi* of the petitioners to such provisions of the bill and portions of the preamble relating thereto as can by possibility affect the petitioners. The promoters concede that any petitioner, who can point out any alteration in the Act of 1875, which may affect him, is entitled to be heard as regards that alteration; but beyond that I venture to submit that the common-sense construction of the Order would carry the same limitation in this case as arises under all other cases before this Court.

Sir F. S. REILLY: The S. O. would appear to be framed upon the assumption that the bill to be dealt with was a bill relating solely to gas or water. It is a different case where you are dealing with an omnibus bill such as this, which deals with several other objects besides the consolidation of gas and water provisions.

O'Hara: The petitioners themselves are limited in their objections to the Bill, and do not allege that the preamble generally is untrue, but only that it is untrue "so far as it relates to the matters aforesaid."

Sir F. S. REILLY: The bill itself is a consolidation of all previous Acts of Parliament and Orders in Council relating to the borough of Birmingham; and, for my own individual part, I should not like to be taken as acquiescing in the view that, where there is a consolidation bill before the House, whether a public or a private bill, every one who would have been entitled to be heard against one of the clauses when originally brought forward, has not an absolute right to be heard against the re-enactment of that clause. The principle that Parliament proceeds upon in respect to public bills is that every clause in a consolidating bill is open to discussion, and that the whole subject is re-opened. It is only by a kind of acquiescence and general agreement in the House of Commons that a consolidating bill is allowed to pass without discussion; and, where we are dealing with a private bill, I think it is not to be assumed that parties opposing have not an equal

right to attack a re-enactment of a clause that they would have had to attack the original clause.

The CHAIRMAN: I think, if I remember rightly, it was urged in the argument by which the S. O. was supported in the House that it was advisable to give an opportunity to review past legislation; and as has been stated in argument to-day, the order was framed in consequence of our refusal according to our practice to let these corporations in on bills, the object of which was merely to increase the capital of the company. The object of the local authorities in being heard in such cases was not to oppose the bill as far as raising any capital was concerned, but to have an opportunity of urging that the rates, which were not really affected by the bill, ought to be lowered. Therefore it seems to me that they were let in, so far as the argument in support of the order was concerned, especially to review past legislation.

Mr. PARKER: Against some gas bills that we had before us, the complaint on the part of the local authorities was that the gas company had treated them ill and they wanted to take an opportunity, the company coming for new capital provisions, to protest against that, but the practice of the Court was against the local authorities being allowed to be heard in such cases. That practice has now been over-ruled by S. O. 134a.

Pope: No doubt that was so. I would ask the Court now to look at the arrangement of the sections of the bill. The gas and water provisions are two distinct parts.

The CHAIRMAN: We are of opinion that S. O. 134a has completely ousted the jurisdiction of the Court in cases where the local bodies present a petition alleging that their district may be injuriously affected, subject to this qualification: that inasmuch as the S. O. appears to contemplate a bill relating to lighting or water supply, or the raising of capital for such purposes only, the question of *locus standi* on other points raised by the bill is still to be settled by the Court.

O'Hara: We say in the Wednesbury petition, "the preamble of the bill so far as it relates to the gas undertaking cannot be proved," and we say in the Aston petition that "the preamble of the bill so far as it relates to the matters aforesaid," that is, the gas and water, "cannot be substantiated." The Wednesbury petitioners would therefore have a *locus standi* limited by the allegations of their petition to Part 15 of the bill, and the Aston petitioners would have a *locus standi* limited by the allegations of their petition to Parts 15 and 16 of the bill, and so much of the preamble as relates thereto.

REILLY : If the decision were in the affirmative, "*locus standi* disallowed except clauses 15 and 16 of the bill," and so on, seem to imply that we had allowed or not on other points, whereas the decision is that it has no jurisdiction to allow or not upon those points.

URMAN : The formal decision of the Court follows : *Locus Standi* of (2) Aston and Board and Guardians of the Poor of Aston Union *Disallowed*, except as to Part XVI. of the bill, and Parts II. and III. of the 9th Schedule, as to which the petitioners are entitled to be heard by virtue of

Locus Standi of (3) Wednesbury and Darlaston and Guardians of the Poor of Darlaston *Disallowed*, except as to Part XV. and Part II. of the 9th Schedule, as to which the petitioners are entitled to be heard by virtue of S. O. 134a.

For Petitioners (2), *Wilkins, Blyth & Co.*

For Petitioners (3), *Hanly.*

(4) BIRMINGHAM CORPORATION GAS SUPPLY ANNUITANTS.

Locus standi of the petitioners was objected to as they represented only a small part of a large number of annuitants, and their rights, powers, and privileges were not preserved by the bill.

appeared for the petitioners.

C. (for the promoters), conceded the petitioners' *locus standi* against clause 293, that being the one repealing all Acts relating to annuitants, and clause 294, the saving which he undertook to introduce into the bill, the words "and their respective

Locus standi accordingly *Allowed* against clauses 293 and 294, and so much of the bill as relates thereto, so far as they concerned the petitioners.

For Petitioners, *Dyson & Co.*

For Bill, *Sharpe, Parkers, Pritchard & Co.*

BRISTOL AND LONDON AND SOUTH-WESTERN JUNCTION RAILWAY BILL.

Petition of PROMOTERS OF THE PEWSEY, SALISBURY AND SOUTHAMPTON RAILWAY.

9th April, 1883. — (Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE-PALMER, M.P.; Mr. PARKER, M.P.; Mr. MELDON, M.P.; and Sir FRANCIS REILLY.)

Competition between Projected Railways—Same Lands taken—Local and Through Competition—Running Powers—Working Agreements—Through Competition, how far Effective with merely Permissive Powers to make Working Agreements.

Practice—Petition, Vagueness of Allegations in—Evidence to explain Petition—Petition of Promoting Company against Petitioners' Bill, quoted in aid of Petitioners' case—North Wales Narrow Gauge Railway Bill (2 Clifford & Stephens, 243) distinguished.

Two bills were promoted for the construction of railways to be connected with the South-Western company's system at Grateley and Salisbury respectively, partly with a view to local traffic, but chiefly to open up new routes from Bristol and South Wales to Southampton, and northward *via* Amesbury to London. Each set of promoters had petitioned against the bill of the other; and at Amesbury the same land was scheduled in each bill. The petitioners, whose case was now before the Court, had not objected to the *locus* of the promoters against their bill. They alleged generally a claim to be heard on the ground of competition, but as they had not stated between what points the competition would arise, they proposed to quote in aid of their case the promoters' petition against the other bill, in which the competition between the two schemes was clearly alleged. It was objected that such a mode of proof was against a precedent, which was cited, and, if allowed, would in effect, be granting a *locus* to the petitioners, not upon their own allegations, but upon those made by the promoters in a petition upon another case not before the Court:

Held, that the precedent cited was to be distinguished from this case; that the petitioners had a right, under the circumstances, to support their general allegation of competition by reference to a document binding the promoters, which admitted the competition, and clearly set forth the points at which it would arise; and that the petitioners were entitled to a general *locus* on the ground of competition.

The *locus standi* of the petitioners was objected to, because (1) no land of theirs can be compulsorily taken under the bill; (2) although the promoters' railway No. 1 is sought to be made on the same land as the petitioners' railway No. 1, no such interference or competition with the petitioners' railway will be thereby created as entitles them to be heard; (3) the general statement of competition in paragraph 14 of the petition is not, by reason of its vagueness, such a statement of competition as entitles the petitioners to be heard; (4) the fact that the promoters and the petitioners seek to take the same lands for their proposed respective railways does not entitle the petitioners to be heard as landowners generally against the bill, but only as to so much of the bill as authorises the taking by the promoters of the said lands: and to that much of the bill the promoters admit the petitioners' right to be heard; (5) except as aforesaid the petition alleges no ground of objection entitling the petitioners to be heard.

Ledgard (for petitioners): We are promoting a line from Pewsey to Southampton, *via* Salisbury, which competes with the line proposed by this company. Both bills have been referred to the same Committee; the same land at Amesbury is proposed to be taken for the purposes of both lines, and in the petition presented against our bill there is a distinct allegation by the present promoters that the two bills are competing. How, then, can they deny our right to be heard on the ground of competition? It may be said that we are not entitled to refer, in aid of our case, to the promoters' petition against our bill (*North Wales Narrow Gauge Railway Bill*, 2 Clifford & Stephens, 243); but the decision in the case cited was given so long ago as 1872, not by a full Court, and has not since been followed.

The CHAIRMAN: You will probably be able to prove competition without going into the promoters' petition against your bill.

Ledgard: Our petition distinctly raises the question. We say (par. 14):—"The railway

of the Bristol bill is projected in direct hostility to the railway of your petitioners, and for the purpose of competing with them."

Pembroke Stephens, Q.C. (for promoters): That is the only statement in the petition about competition?

The CHAIRMAN: If it is proved, surely that must be taken to be a sufficient allegation of competition?

Stephens: As they make no other allegations explaining what the competition will be, the petitioners must show between what points it will arise. Otherwise, a mere general allegation that there is competition between two lines can no more give a railway company a *locus*, if disputed, than a petitioner can obtain a *locus* by saying "I am a landowner," if the fact is challenged.

Ledgard: Our petition must be taken as a whole, and in other parts of it we allege that our line will serve a portion of the district proposed to be served by the Bristol scheme; that in the matter of levels, gradients, cost and public convenience, the latter compares unfavourably with the line we propose; that, as both schemes propose to take the same land, it is physically impossible that both should be made; and that our line is in every way superior to that contained in the Bristol bill. I propose now to call the engineer to show the points at which there will be competition.

Stephens: It is usual for counsel to show a *prima facie* case of competition; it is not necessary to call a witness to do so.

Ledgard: Our petition is objected to as vague; it is competent for the Referees to take evidence for the purpose of clearing up any vagueness; and the engineer will explain the situation from the map better than I can.

[*Mr. Clarke*, C.E., was then called, and showed that, besides the competition for local traffic in the Vale of Amesbury, traffic could be carried by either line, from Southampton or London, Bath, Bristol, and South Wales, to points north and south.]

Stephens: As regards this alleged through competition, the petitioners will have no means of getting a passenger beyond Pewsey at one end, and Salisbury at the other. Unless they can show some means of getting beyond Pewsey by running powers, their line is simply a Pewsey and Southampton line, and they have no more right to claim anything beyond Pewsey than we have to claim anything beyond Grateley.

Ledgard: The Bristol line of the promoters starts from a junction with the South-Western system at Grateley, and runs to Radstock, where it joins the North Somerset line, over which it takes running powers. The promoters, there-

ore, propose a line which will give them access to Bristol, with a station there, and thence to Grateley, where they would hand over their traffic to the South-Western. On the other hand we should be connected with the Great Western at Pewsey, and so traffic would be carried by our line between Bristol and Southampton. The object in each case is through communication, and we take power in our bill to enter into agreements with the Great Western. It is not usual to ask for running powers over lines with which you are in friendly relation. Apart from through traffic, the local case of competition is enough to let us in; and the *North Wales* case does not preclude us from referring to the promoters' petition.

The CHAIRMAN: I think we may as well look at that petition. In the *North Wales* case it was probably unnecessary to refer to the counter petition in order to prove the petitioners' case; but if a case of competition is alleged generally, as it is here, and we are told that that case can be proved by referring to the promoters' petition against the petitioners' bill, the Court do not think they ought to exclude such proof.

Ledgard: The promoters say in their petition against our bill that the traffic in the district proposed to be traversed is inadequate to support a second railway; that the Pewsey line "will, at certain points, directly compete with railway No. 1, authorised by the Bristol bill;" and that "while the railways proposed by the bill are necessarily local and limited in their character, they would, if authorised, endanger or defeat the valuable line of communication promoted by our petitioners, which offers advantages not only to the locality itself, but, by connecting the system of the South-Western railway with Bristol, opens up a new and expeditious route to the metropolis and to other parts of England."

Stephens (in reply): If the Pewsey bill were promoted by the Great Western company, a great deal might be said for the petitioners' argument; but it is a bill brought forward essentially as having no connection with the Great Western, and as promoted by an independent company from Pewsey to Salisbury, and in agreement with the Great Western company scheduled, nor are any running powers proposed for from Pewsey to Bristol. The line is therefore simply a local line, whereas our bill takes running powers from Radstock to Bristol, and may therefore be properly described as for a line from Bristol to Grateley. No. 1 line is from Grateley to Radstock; No. 2 is a short bit of Radstock to Wellow. Where you have a line pointing north and south, and another pointing east and west, the Court have not recognized any competition entitling petitioners

to appear. This is a case in point. When traffic passing over our proposed line reaches Grateley, there is no power in the bill to take it further, either northward, to London, or southward, to Southampton.

Ledgard: Your bill, as ours does, contains powers to enter into agreements with the company with whose line you make a junction.

Mr. PARKER: And in your petition you dwell on the advantages which your line offers by connecting the South-Western company's system with Bristol, and by opening up a new and expeditious route to London.

Stephens: Yes, it opens up a route, but until something is done to establish that route no competition arises. The time to complain of competition would be when we come to Parliament for power to make working agreements by which this competition would be established. Till then this is only a case of Pewsey to Southampton on the one hand, and of Grateley to Radstock or Bristol on the other. With regard to our taking the same lands as the petitioners, all they are entitled to is a *locus* limited to the question in connection with the construction of the works at that particular point.

The CHAIRMAN: You need not trouble yourself with that question. The alleged competition is the main question; and our difficulty in not treating this as a case of competition arises from the statement in your own petition.

Stephens: Then if you give the petitioners a *locus* they would gain it not upon their own petition, but upon ours.

The CHAIRMAN: Hardly. They would be proving an allegation made in their own petition by a document by which you are bound. Your petition states how the competition will arise at certain points; and the question is whether that must not be taken against you. Under all the circumstances, we think the petitioners are entitled to a general *locus standi* on the ground of competition.

Stephens: Would you not limit it to railway No. 1?

The CHAIRMAN: No, we think it would be inconvenient to limit the *locus*.

Locus standi Allowed.

Agents for Bill, *Dyson & Co.*

Agents for Petitioners, *Martin & Leslie.*

BRISTOL PORT AND PIER RAILWAY
BILL.

Petition of W. H. HARFORD.

16th April, 1883.—(Before Mr. PEMBERTON, M.P.,
Chairman; Mr. HINDE-PALMER, M.P.; Mr.
PARKER, M.P.; and Sir FRANCIS REILLY.)

*Railway Undertaking, Sale and Transfer of—
Vesting of Undertaking in two other Railway
Companies—Dissolution of Company—Trustee
under Will as Unpaid Creditor for Land and
Mortgages of Existing Company—Statutory
Right of Petitioner to Directorship of Com-
pany—Rent-Charge upon Land—Apprehended
Interference with Security of Petitioner as to—
Saving Clause as to Debts relating to Land—
Lands Clauses Act, 1815, sec. 11.*

The bill provided for the sale and transfer of a railway undertaking to two railway companies, and the dissolution of the present owning company. The petitioner, as a trustee under a will, represented an estate through which the railway passed, and claimed to appear as an unpaid creditor for land (as to which, however, the petition was silent), and as a landowner having a rent-charge on half the amount of the purchase money agreed upon by the deviser and the company for land required for the purposes of the railway. The petitioner claimed to be heard (1) in respect of the rent-charge; (2) as representing an estate, the owner of which had the power of appointing a director upon the board of the existing company. He complained (1) that the bill made no provision for securing the payment of the rent-charge after the sale of the existing company's undertaking, while the purchase-money authorized by the bill would be only sufficient to satisfy the claims of the debenture holders of the company promoting the bill, at whose instance a receiver had been appointed by the Court of Chancery for the purpose of distributing the assets of the company; (2) that his legal status, with regard to the directorship, would be altered by the bill:

Held, however, that the rights of the petitioner were not affected, as the bill (clause 6)

reserved the existing liability of pany with regard to contracts on land; that in addition he would have a general law, a claim upon the toll the purchasers of the undertaking that he was not entitled to be heard in the directorship, inasmuch as the bill by provisions in the bill, was to be solved. (*London and South-West Railway and London*) Bill, 3 (Rickards, 173, distinguished.)

The *locus standi* of the petitioner was to, because (1) no lands or property will be taken or injuriously affected by the bill; (2) the transfer of the undertaking of the Bristol port railway and pier could not be made subject to all such covenants, agreements, debts, liabilities, and engagements as have been entered into or incurred by the company for land; (3) the petitioner alleged in his petition that he is injuriously affected by the bill; (4 and 5) the petitioner claimed to be heard as a trustee of the will of the late John Miles, but it appears by the petition that one of two or more trustees of the said will are or may be still alive and the petition has been signed by such other trustees, and is therefore not signed in conformity with the rules of Parliament; (6) the petitioner claims to be heard as a director of the company the promoters deny such right; the petitioner claims to be heard as a shareholder of the company the promoters deny; the petition discloses any interest as a shareholder distinct from the general interest in the company, and the company have put up against the bill and their right to be heard in their petition is not objected to; (8) the petition discloses no ground for a hearing according to practice.

Ledgard (for petitioner): The petitioner alleges that the bill (clause 3) authorizes the receiver of the Bristol port and pier to sell the company's undertaking (including thereby the lands and property of, or to which the company are possessed or entitled) to the Western and Midland railway company for a sum of £80,000, and that the bill is procured by the mortgagees and by the creditors of the company's undertaking. Clause 6 provides that on the payment of the purchase money and execution of a deed by the receiver, the undertaking shall be divided between the two companies jointly, discharging all contracts, agreements, debts, liabilities,

nts of the company, except such as entered into or incurred by the company, and (clause 10) that the receiver distribute the assets of the company under the Chancery Division of the High Court, and as soon as the assets of the company shall be distributed, the company shall be dissolved and for all purposes cease to exist. Then the petition alleges that the petitioner is the senior trustee of the power of appointment created by the will of the late Philip John King, former owner of the King's Western Railway, and the person beneficially entitled to the estate under the said will being now a bankrupt, the petitioner as such senior trustee is one of the directors of the company under the provisions of their Act of incorporation, and he is the sole shareholder of the company. The railway is for rather more than half its length the King's Western estate forming part of the land devised by the will. No conveyance has been made or executed to the company of the land of the King's Western estate as was required for the purposes of the undertaking; and only one-half of the purchase-money and only one-half of the rent agreed to be paid by the company for the lands so taken, the petitioner and the receiver are entitled to a rent-charge amounting to about £125 per annum. No payment of that rent-charge has been made, and a considerable amount of arrears is due. A sum of £80,000 is an inadequate security for the undertaking of the company, the value of which is increasing, and no provision is made in the Bill for securing the rent-charge to which the petitioner and his co-trustees are entitled, or the payment of arrears.

CHAIRMAN: Is not the petitioner, as a trustee, bound by the seal of the company?

PETITIONER: He is not claiming to be heard *quod* but as a trustee representing this estate with a power to nominate a director.

CHAIRMAN: He is a claimant for unpaid purchase-money.

PETITIONER: We are claiming partly for unpaid purchase-money, and partly in respect of a rent-charge for one-half of the purchase-money; and we are claiming in respect of the directorship as well. By losing his power of appointment to the company the petitioner's legal status is altered.

CHAIRMAN: By the bill the board is to be elected by the company.

PETITIONER: The petitioner has a statutory right to sit on the board, which is going to be taken away by the bill. This case resembles the *London and South-Western, &c. and London* Bill, on the *Petition of Corporation of Kingston* (3 Clifford & Rickards, 173).

Sir F. S. REILLY: Here the company is going to be dissolved. In that case the undertaking was to be continued, though the form of management was to be changed into a joint committee, which would still, in some sense, represent the original company. Here you want to continue the right of appointment to what will soon be a phantom board.

The CHAIRMAN: So far as the petitioner's position as a claimant of unpaid purchase-money and rent-charge goes, *prima facie* he would seem to be protected under clause 6 of the bill, which says, "From and after the payment of the purchase-money and the execution of the deed of conveyance, which conveyance the receiver is hereby empowered to execute, the undertaking shall be vested in the two companies jointly, subject to all the obligations and liabilities of the company under the recited Acts with respect to the maintenance, &c., of the undertaking, &c., but freed from and by this Act absolutely discharged from all claims of shareholders of the company, and from all contracts, agreements, debts, liabilities and engagements of the company, whether directly affecting the undertaking, or affecting the company in respect of the same, except such contracts, agreements, debts, liabilities and engagements as have been entered into or incurred by the company for land." Is there any case where a mortgagee or unpaid vendor has been allowed a *locus standi* where his rights were not affected?

Ledgard: I do not know of any case.

The CHAIRMAN: If there is no case, the ordinary principle of law would prevail, that a mortgagee cannot prevent his mortgagor transferring his estate subject to his mortgage. The mortgagor may sell his estate for what he likes, as long as he reserves the mortgagee's right. Does the bill, apart from the question of the directorship, affect your position in any way?

Ledgard: I admit that the bill does not alter my priority over other classes of creditors, but according to clause 6, the only fund out of which we could be paid as unpaid vendors would be the £80,000 purchase-money.

The CHAIRMAN: They cannot sell the land except subject to your charge upon it. If you choose you may foreclose and enforce your own remedy, but if they exercise their rights, they exercise them subject to yours. If the land was sold to the Great Western and Midland railway companies, they could get no title except subject to your charge.

Mr. HINDE-PALMER: I see nothing is said in the petition about the other half of the purchase-money not represented by the rent-charge. All it says is that no conveyance has ever been

made of the land taken, and no provision is made by the bill for securing to the petitioners the rent-charge.

Ledgard: That seems to be so. That being so, you must assume that the half of the purchase-money not represented by the rent-charge has been paid. With regard to the rent-charge we should not be able to proceed against the assets of the Great Western and Midland companies.

The CHAIRMAN: You cannot do so at the present time, but you could prevent their taking possession of your land until your claim was satisfied.

Ledgard: Clause 6 gives us no right to enforce our claim against the assets of the new undertaking.

The CHAIRMAN: No, but your debt is saved and excepted by clause 6.

Ledgard: By other clauses of the bill the receiver is to sell the undertaking to the two companies for £80,000, and the purchase-money is to be paid into Court to the credit of two suits, which have been instituted by mortgagees, and is to form part of the assets of the company. If that £80,000 is exhausted in paying the claimants in that suit, to which we are not a party, there will be no funds left from which to pay us. There is no power in the bill to enable the Midland and the Great Western to pay us.

The CHAIRMAN: Whoever bought the land would have to take it, subject to your mortgage. They would only hand over the purchase-money on seeing your charge satisfied. If a man mortgages his property, and then sells it, he sells it subject to that mortgage.

Ledgard: Clause 6 is not clear upon that point.

The CHAIRMAN: It preserves your right. Yours is "a contract, agreement, debt, liability, or engagement entered into or incurred by the company for land."

Sir F. S. REILLY: The sale is to be freed from all contracts, and so on, except contracts in respect of land.

Ledgard: Inasmuch as it is probable that the result of the two suits in Chancery will be to absorb the whole of the £80,000, I claim to go before the Committee to prevent the sale being authorized by Parliament on those terms. The clause of the bill empowering that sale should be made clear, so as to give me a remedy against the purchasing companies; there should be a provision that claims in respect of unpaid-for land should be discharged by the purchasing companies.

Sir F. S. REILLY: That would be putting you in a better position than you are now in.

Ledgard: Then the provision might run that

in the event of the purchase-money not being sufficient to pay my claim should be borne by the purchasing

The CHAIRMAN: Is your rent-charge on the land or is it rent-charge on all the undertaking of the company

Batten (for promoters): The rent-charge extends to the undertaking of the company. It has been instituted in Chancery by debenture holders, who have been unable to get their debenture money or their interest promoted by them in hostility to the order that they may sell the line for its worth. A receiver has been appointed, and an outcome of those proceedings has been brought in, but no formal order has been given to its introduction by Chancery. Where a suit is brought by debenture holders, the order of the Court of Chancery is to refer to the clerk to find the priorities, and the clerk has found that this rent-charge of the line ranks in priority to all the mortgages, so that two half-yearly payments of rent-charge were due at the time of the sale. The chief clerk also finds that there is a charge upon the tolls and rates of the company. (Lands Clauses Act, 1845, cap. 18) sec. 11.) We take powers to sell the undertaking to the Midland and Great Western companies for £80,000, and say that if the Midland and the Great Western companies pay us £80,000, they shall be freed from all simple contracts, but not freed from any mortgages entered into with respect to land. The companies distribute that £80,000, and the petitioner would come upon them to provide for his rent-charge.

The CHAIRMAN: The undertaking is sold subject to the incumbrances, and those who do not join, and freed from the incumbrances of those who do join, and the petitioners paid out of the £80,000.

Sir F. S. REILLY: It is better to have it as a mortgage, but simply as a charge, and you can put in force the provision contained in sec. 11 of the Lands Clauses Act, 1845, that if payment is not made by a certain date after demand, you may take the same by distress upon the chattels of the promoters, that is, upon the undertaking, which, in this case, is the Midland and Great Western companies, instead of on the goods of this company.

The CHAIRMAN: We do not think the interests of the petitioner are affected by the bill. He is much more

ment of the rent-charge now than under the former state of things, and we, therefore, think that he is entitled to a *locus standi* in question of rent-charge. With regard to the issue of the directorship, by the action of the future holders, the directors have ceased to be directors for the carrying on of the undertaking, and a receiver has been put into possession. Therefore the board's power having been ended to this extent, we think that the act of the petitioner having power to appoint a member of the board is not sufficient to enable him to be heard in this case.

It for Petitioner, *Rees*.

It for Bill, *Dyson & Co.*

DOCKS (CARDIFF) (RAILWAYS, &C.), BILL.

of (1) GREAT WESTERN RAILWAY COMPANY; and (2) PONTYPRIDD, CAERPHILLY, AND PORT RAILWAY COMPANY.

March, 1883.—(Before Sir ARTHUR OTWAY, Chairman of the Committee of Ways and Means; Mr. PEMBERTON, M.P.; Mr. HENDERSON, M.P.; Mr. PARKER, M.P.; Sir F. S. LEE; Sir JOHN DUCKWORTH; and Mr. JAM-CARTER.)

Trust owning Railways in connection with Docks—Power of Agreement with Railway Companies sought by Bill—Competition with other Railways, how affected by Bill—Complaint against past Legislation—Establishment of Continuous Railway Route on part of Promoters—Railways Clauses Act, 1863, Part III.—Regulation of Railways Act, 1873—Running over Third Companies' Railways—Locus Standi Conceded as to Running over Petitioners' Railways—Practice—Reply upon Act Cited in Argument.

was promoted by the Butetrustees, owning extensive docks and short railways in connection with their docks, and contained, *et alia*, powers (clause 17) for the promoters to enter into agreements with certain railway companies, who were named in the bill, and also with "any company fully using" any of the railways of the companies named in the bill. These powers of agreement included construction, maintenance, use, &c., as well as reciprocal

running powers, and were of the most extensive character relating to the respective undertakings of all the contracting parties. The petitioners were railway companies competing for traffic in the same district, and to the docks belonging to the promoters, and they complained that such a power would enable the promoters to enter into agreements with their competitors to an extent that would be ruinous to their traffic in the district. They further pointed out that by another clause (26) of the bill the promoters were to enjoy all the *status* of a railway company as well as a dock company, and were to be deemed to form a continuous line of railway in connection with the other companies with whom they had power to enter into the agreements authorised by clause 17. The petitioners also claimed a *locus standi* against another clause (18) empowering the promoters to run over the railways of other companies, and to exclude the petitioners from a share of traffic.

It was contended on behalf of the promoters that similar powers to those contained in clause 17 of the bill were already contained in an Act of 1882, and that both as regards clauses 17 and 26, the incorporation of Part III. of the Railways Clauses Act, 1863, as amended by the Regulation of Railways Act, 1873, protected the petitioners, and that the powers contained in those clauses could not be unfairly exercised to their injury; while as to the running powers contained in clause 18, the petitioners were only entitled to be heard so far as such powers extended to railways belonging to or leased by them:

Held, that the petitioners were only entitled to be heard so far as powers were contained in the bill to run over, work, and use railways belonging to or leased by them.

Counsel for the petitioners, having referred to an Act in his argument, was held not to be entitled to make further observations in reply upon a section of the same Act, which had been subsequently cited at length by counsel for the promoters.

The promoters conceded the *locus standi* of (1) the Great Western railway company against

clause 18 of the bill in so far as powers would be thereby conferred upon the promoters to run over, work, and use, with their engines, carriages, and waggons, and their officers and servants, any of the lines of railway belonging to or leased to the petitioners, and against so much of the preamble as relates to such powers, but objected to their being heard against any other part of the bill on the following grounds: (1) the bill contains no provisions for taking any land or property belonging to petitioners; (2) their petition does not allege any case of competition entitling them to be heard; (3) they are not entitled to be heard by virtue of possessing running powers over or a right to use any of the railways or stations of the Rhymney or Taff Vale railway companies, or any of the railways or lands of the promoters; (4) they are not entitled to be heard with respect to any powers which are contained in the bill (clause 17) for enabling the promoters to enter into agreements with the Rhymney railway company, the Taff Vale railway company, and any company using any of the railways of the two last-mentioned companies, or of the Penarth harbour dock and railway company; (5) they are not entitled to be heard with respect to any rights sought by the bill over the railways or works belonging to or leased to or used by the Taff Vale railway company, or the Rhymney railway company, except the railways belonging to or leased by the petitioners as above-mentioned; (6) the petitioners are not entitled to be heard against the bill in so far as it proposes (clause 26) that for the purposes of the Railway and Canal Traffic Act, 1854, and the Regulation of Railways Act, 1873, the promoters are to be deemed a railway company, and that their railways shall be deemed to be railways forming part of a continuous line of railway with the railways of the Taff Vale, Rhymney, and Great Western railway companies, and the petitioners have not alleged any interest which entitles them to be heard against those powers; (7) the petition discloses no facts entitling the petitioners to be heard according to practice.

The *locus standi* of (2) the Pontypridd, Caerphilly and Newport railway company was conceded against clause 18 to the same extent as that of the Great Western railway company, and was otherwise objected to on similar grounds and in similar terms as that of the Great Western railway company (with the exception of those stated in objection (6), *supra*).

Pember, Q.C. (for petitioners (1)) : Petitioners are owners of railways extending from London via Gloucester and Chepstow to Newport, and traversing the entire length of South Wales, including Cardiff, Swansea, and Milford Haven,

besides a railway extending from Pontypool and other places northward thereof, to Quaker's Yard, Aberdare, &c., and they form junctions with, among others, the railways of the Rhymney and Taff Vale companies, with whom they interchange running powers. Clause 17 of the bill enacts that "the undertakers on the one hand, and all or any of the companies following that is to say: the Rhymney railway company, the Taff Vale railway company, and any company lawfully using any of the railways of the Rhymney company, the Taff Vale railway company, or of the Penarth Harbour dock and railway company on the other hand, may, subject to the provisions of Part III. of the Railways Clauses Act, 1863, as amended by the Regulation of Railways Act, 1873, from time to time enter into and carry into effect, and from time to time rescind and vary contracts, agreements, and arrangements, for any of the purposes following, and all or any matters incidental and accessory thereto, that is to say: the construction, running over, working, use, management, and maintenance by the contracting parties of any of the railways and other works and conveniences belonging to or leased by them respectively; the supply under any agreement for the railways being worked or used by the contracting parties, or either of them, of rolling stock and machinery necessary for the purposes of such agreement and of officers and servants for the purposes of the traffic of such railways;" and the clause goes on to provide for the construction of sidings and junctions, the interchange and apportionment of traffic, the fixing of tolls, amount of rents, rebates, and allowances, and other matters to be arranged between the parties to the agreement authorized by the earlier part of the clause. It is clear that this clause (17) would include not only the railways named, but also the London and North-Western and certain other railway companies; and therefore the undertakers, who are primarily a dock company, as is seen from their two main Acts of 1866 and 1882, would be enabled on the one hand to construct where it may be necessary to construct, or to allow the London and North-Western to construct, docks and railways, and also to run over, work, use, manage, and maintain, the 1,800 miles of the London and North-Western, because that company is included under the words "any company lawfully using any of the railways of the Rhymney company," &c. On the other hand, the London and North-Western, and the Rhymney or Taff Vale companies might either of them contract to construct the docks of the undertakers, and acquire the control of them, practically converting the Bute dock trust into a railway

pany. It is obvious that such a power d create a competition as against the Great tern, which would be fatal to our traffic to iff. The same principle was involved in *East and West India Dock Extension Bill* ifford & Rickards, 188). Then by clause 26 a bill it is proposed to enact that "for the uses of the Railway and Canal Traffic Act, and the Regulation of Railways Act, 1873, any Act, altering, affecting, amending, or ening the same, the undertakers shall be ed to be a railway company, and the rail- of the undertakers by the Bute Docks Acts his Act authorised, shall be deemed to be ays forming part of a continuous line of ay or railway communication with the ays of the Taff Vale railway company, Rhymney railway company, and the Great tern railway company respectively." In r words, as soon as they make one of these ements with one of the railway companies, the Taff Vale, under clause 17, then their a and railways are, for the purposes of the ways and Canal Traffic Acts, 1854 and 1873, other Acts affecting or amending the same, eturned into railways within the meaning hose Acts, and by working the Taff Vale ay, they would become competitors with Great Western railway, they would be able orce through rates and other things upon Great Western, and they would have, as ast the Great Western, all the *status* and sponding advantages of a railway company, h they have not now. Then we allege that ause 18 of the bill it is proposed, among ' things, "to authorise the undertakers, et to the provisions of the intended and to the Bye-Laws, Rules, and Regu- s, as approved by the Board of Trade, oe in relation to the respective railways aafter mentioned, to run over, work, and ith their engines, carriages, and wagons, their officers and servants, whether in e of engines or trains or otherwise ed in the service of the undertakers, for the purposes of traffic of every ption, the several lines of railway be- ag to or leased to or used by the aney railway company or the Taff Vale ay company, or either of such companies, ick either of such companies may now or fter be entitled to use, and also the as, roads, platforms, water, water engines, e sheds, standing room for engines, book- and other offices, warehouses, sidings, ls, telegraphs, telegraph wires, instruments appliances, telephones, points, junctions, inery, works, and conveniences of or ected with those railways and portions of

railway respectively upon terms to be agreed upon between the undertakers and the said companies respectively or as, failing agreement, may be determined by arbitration under 'The Railways Companies Arbitration Act, 1859.'" With regard to that clause (18) we are not content with the limited *locus standi* conceded to us by the notices of objection, but ask to be heard in respect of the effect upon us of the power that they confer upon companies other than ourselves.

Batten (for petitioners (2)): Our petition raises the same questions with regard to clauses 17 and 18 of the bill as those raised by the petition of the Great Western railway company. With regard to clause 17, I pray in aid the arguments addressed to the Court by Mr. Pember, and with regard to clause 18 of the bill I submit that the *locus standi* conceded by the promoters is not sufficient (1) because it would not enable the petitioners to go before the Committee to contend that the Bute Dock company ought not as a dock company to be allowed to have running powers over any of the four or five railways leading into the docks at Cardiff, and thereby to give preference to one or two of those railways to the injury of the petitioners; and (2) because the Bute Dock company would, by agreement with the owners of coalfields in Glamorganshire, by simply laying down branch sidings to one or two of those railways, be able to abstract traffic from our railway.

O'Hara (for promoters): The complaint of the petitioners here is a complaint against the legislation of 1882. The Bute Docks Act, 1882 (45 & 46 Vict., cap. 242, sec. 48), enacts everything that the petitioners complain of as being authorised by the present bill, the only object of the bill being to extend to the sidings the power that was given under the Act of 1882 with reference to the main docks, railways, and other works of the dock undertaking. Section 48 of the Act of 1882 is as follows: "In addition to any other powers in that behalf, contained in the Bute Docks Act, or any of them, the undertakers on the one hand, and all or any of the companies following (that is to say): The Rhymney railway company, the Taff Vale railway company, the Great Western railway company, the Pontypridd, Caerphilly and Newport railway company, and the Penarth Harbour dock and railway company, or any one or more of the said companies on the other hand from time to time may enter into and carry into effect, and from time to time may rescind and vary (subject to the provisions of Part III. of the Railways Clauses Act, 1863, as amended by the Regulation of Railways Act, 1873), contracts, agreements, and arrangements for

any of the purposes following and all or any matter incidental and accessory thereto (that is to say): The construction, working, uses, management and maintenance by the contracting parties of any railways, sidings, staiths, slips, piers, wharves, embankments, buildings, and other works and conveniences belonging to or leased by them; the supply under any agreement for the railways being worked and used by the contracting parties, or either of them, of rolling stock and machinery necessary for the purposes of such agreement, and of officers and servants for the purpose of traffic of such railways; the payments to be made, and the services to be rendered, and the conditions to be performed and observed with respect to such construction, use, management, and maintenance; the construction and maintenance of sidings, junctions, and communications between the respective works of the contracting parties; the interchange, conveyance, and delivery by any or either of the contracting parties of the whole or any part of the traffic destined for, or coming from the docks, railways, or works of the others or other of them; the levying, fixing, division, and apportionment of the tolls," and so on. So that under that section the undertakers on the one hand and the petitioners against the bill, the Great Western, and the Pontypidd, Caerphilly and Newport companies on the other hand, have power to make more extensive agreements than those for which power is sought under this bill. The only object of clause 17 of this bill is to supplement the power given by section 48 of the Act of 1882, in respect of some small railways, the longest of which is about half a mile in length, which might more properly be called sidings. With regard to the apprehension on the part of the petitioners that this power would let in the London and North-Western railway company, or other companies to their detriment, clause 17 provides that the agreements are to be subject to the provisions of Part III. of the Railways Clauses Act, 1863, and that Act provides that in every such case, that is, in the case of a working agreement for the maintenance and management of a railway, or for the use and working of a railway, or for the fixing and apportionment of the works and so on (section 22), "the authority so to agree, or the agreement when entered into, shall not in any manner affect any of the tolls, rates, or charges which the companies, parties thereto, are from time to time respectively authorised to demand and receive from any person or from any other company; but all such persons and companies shall, notwithstanding the agreement, be entitled to the use and benefit of the railways of the several companies parties to

the agreement, on the same terms and on payment of the same and charges, as they would be if such had not been given, or the agreement been entered into:" then the agreement have the approval of the Board of Trade only to last for 10 years. In the *East India Docks* case, cited on behalf of the petitioners, the bill did not provide that the agreement was to be subject to the provisions of Part III. of the Railways Clauses Act, 1863, and the Regulation of Railways Act, 1843, and that ground a *locus standi* was conceded to the petitioners. In the case of the present bill, however, the incorporation of Part III. of the Railways Clauses Act, 1863, will prevent any alteration of rates as well as the introduction of through rates and other conditions in violation of the interests of competing railway companies. Then as to the running powers of clause 18 of the bill, it would be contrary to the practice of this Court to give a *locus standi* on that ground.

Pember: I ask to be allowed to say a few words about the Bute Docks Act, 1882, which has been cited.

O'Hara: The learned counsel for the Western railway company referred to the Bute Docks Acts, 1866 and 1882, and said were the two main Acts of the trust, and he has therefore no right to object upon my comments on either Act.

Pember: My attention was not drawn to section 48 of the Act of 1882, which is now cited at length by my learned friend. I shall ask the Court to make a few observations on that Act.

O'Hara: I shall object to your making any observations on that Act as you have cited both Acts in the course of your argument.

Pember: I referred to them as the Acts of the company; that is not the case of the Act of 1882.

The CHAIRMAN: No doubt counsel is entitled to reply upon cases cited, or Acts of Parliament quoted in the argument of opposing parties. We do not think that Mr. Pember is entitled to make any observations in reply on any point which was mentioned by himself and which is not in the bill, and of the material points upon which he might have been informed by the counsel who instruct him.

The *locus standi* of the Great Western Railway Company is *Disallowed*, except in so far as clause 18 of the bill in so far as possible may be thereby conferred upon the company to run over, work, and use with the carriages and waggons, and their servants, the lines of railway belonging to the

or leased to the petitioners, and against so much of the preamble as relates to such powers.

The *locus standi* of the Pontypridd, Caerphilly and Newport Railway Company is *Disallowed*, except against clause 18 of the bill, in so far as powers would be thereby conferred upon the promoters to run over, work, and use with their engines, carriages and wagons, and their officers and servants, the lines of railway belonging to, or leased to the petitioners, and against so much of the preamble as relates to such powers.

Agent for Petitioners (1), *Mains*.

Agent for Petitioners (2), *Bell*.

Agents for Bill, *Grahames, Currey & Spens*.

EAST AND WEST YORKSHIRE UNION RAILWAYS BILL.

Petition of (1) GREAT NORTHERN RAILWAY COMPANY.

16th April, 1883.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE-PALMER, M.P.; Mr. PARKER, M.P.; and Sir F. S. REILLY.)

Railway Companies—Same Lands Scheduled—Landowners' Locus Standi Claimed by Petitioning Company—Limitation of Locus—Practice—Court will Specify Lands in respect of which Locus is Granted.

Two railway companies scheduled the same lands for the purposes of their respective undertakings in bills promoted by them in the same session. The petitioning company claimed a general *locus standi* against the bill promoted by the other company, on the ground that, having scheduled the lands and served notices upon the owners, they were in the position of landowners over whose property compulsory powers were sought:

And, however, in accordance with the usual practice of the Court in such cases, that the petitioners were entitled to be heard only in respect of the lands scheduled by both companies; which lands, in order to avoid reference to the bill of the other company before the Committee, were specified in the order of the Court, according to their numbers in the book of reference.

The *locus standi* of the petitioners was objected to, because (1) the petition does not

allege or show that any competition between the petitioners and the promoters would result from the bill, or the works authorised thereby; (2) the petition does not allege or show that the bill contains provisions for taking or using any parts of the lands, railway stations, or accommodations of the petitioners (except so far as may be necessary for the purposes of constructing the junctions of railways 1A and 1B with the petitioners' railway, against the construction of which junctions the promoters admit the right of the petitioners to be heard) or for running engines or carriages upon or across the same, or for granting other facilities affecting the petitioners; (3) although the petitioners allege that for the purpose of widening their Lofthouse North junction, they are seeking compulsory powers over certain lands, over which the promoters are also seeking compulsory powers, no such interference with the exercise by the petitioners of any powers which they may obtain for such proposed widening would result, as would entitle the petitioners to be heard against the bill generally; although the promoters admit the right of the petitioners to be heard upon the question of the compulsory purchase of the lands in question; (4) the petitioners are not entitled to be heard against the provisions of clauses 56 and 57 of the bill, which so far as they relate to the petitioners or their undertaking, are purely permissive, and in which, so far as they relate to companies other than the petitioners, the petitioners have no interest; (5 and 6) the bill contains no provision, and the petition no allegation that entitles the petitioners to be heard according to practice.

Balfour Browne (for petitioners): We claim a general *locus standi* on the ground that the promoters propose to take land which we are also proposing to take by a bill of this session.

The CHAIRMAN: Do you allege competition?

Balfour Browne: Yes; but we do not rely so much upon that as upon the ground that we are competitors before Parliament for the same land that this company seeks to take, and with respect to which we make the following allegation:—"Railways No. 1, No. 1A and No. 1B are so laid out as to prevent the widening of your petitioners' railway. Your petitioners are seeking powers by their bill now pending in your Honourable House to widen their Lofthouse North junction, and the company are seeking powers to acquire compulsorily lands sought to be acquired by your petitioners for that widening." We have given notices to take this land, and are in the same position as if we had actually bought the land, and therefore entitled to a landowner's *locus standi*. (*Devon and Cornwall Central Rail-*

way Bill, 3 Clifford & Rickards, 136; Romford and Tilbury Railway Bill, *Ib.* 205.)

Ledgard (for promoters): In the *Devon and Cornwall* case the petitioning company had been served with a landowner's notice. The mere giving of a notice to owners to take land by a railway company, as in this case, does not give that railway company a landowner's *locus standi*. (*Whitehaven, Cleator and Egremont Railway Bill*, 2 Clifford and Rickards, 65.) There is no allegation here that the making of the one railway is incompatible with the making of the other. The petitioners only say that our railways are so laid out as to prevent the widening of their railway. There is no case in which a general roving *locus standi* was given merely because the same lands were proposed to be taken. In the case of the *Bristol and London and South-Western Railway Bill*, on the *Petition of Promoters of Pewsey, Salisbury and Southampton Railway* (*supra*, p. 261), although the petitioners scheduled the same land as the promoters, the question of competition was fully argued before the Court granted a *locus standi*. Where two railway companies promoting bills in the same session of Parliament have scheduled the same land, they have always been limited to a *locus standi* with regard to the physical interference of the one line with the other, and have not been given a general *locus standi* to go into the whole policy of the bill. Where it was absolutely impossible that one line could be made if the other was sanctioned, it might become an important question in the public interest for the Committee to inquire which of the two lines was the preferable line to pass in the public interests; and it might be that in such a case a general *locus standi* should be given to the petitioning company; but where there is no allegation that the construction of the one line would be incompatible with the construction of the other, and where there is no competition alleged, it becomes really a clause opposition, and the petitioners are only entitled to a *locus standi* limited to the question of interference. The *North Wales Narrow-Gauge Railway Bill* (2 Clifford & Stephens, 243), is on all-fours with this case.

Mr. HINDE-PALMER: The petition does not seem to be directed against the preamble of the bill.

Balfour Browne: It alleges "The preamble of the said bill is, as your petitioners humbly allege, unfounded, and cannot be substantiated by evidence," and there is a further allegation that the line is not wanted.

Ledgard: Those are merely the usual general allegations.

The CHAIRMAN: We think the weight of authority, though there may be one case perhaps not at first sight reconcilable with the others, is in favour of limiting the *locus standi* to the particular lands which are scheduled by both companies.

Balfour Browne: I take it that you will give us a *locus standi* against the railways for the making of which the lands in question are proposed to be taken compulsorily.

Ledgard: The *locus standi* should be limited to the interference with the lands scheduled by both companies.

The CHAIRMAN: The petitioners must be limited to a *locus standi* in respect of the lands scheduled by both parties, and so much of the preamble as relates thereto. It seems desirable that our order should specify the particular land so scheduled.

Sir F. S. REILLY: The difficulty would be if our order was expressed in general terms, that it would involve a reference to another bill. Probably the two engineers will refer to the deposited plans and the books of reference of each company and specify the lands.

[The engineers for both parties having examined the plans and books of reference, *hande* in the statement.]

Locus standi of the Great Northern Company Disallowed, except as against so much of *claus* as authorises the acquisition of lands *numb* in the Book of Reference 1, 2, 3, 4, 5, 7, 11, 14, 15, 16, 17, 18, and 19 in the Parish of *Ardsley*, and 1A, 2, 3, and 4 in the Parish of *Wakefield*.

Agents for Petitioners, Nelson, Barr & *Nelson*

Petition of (2) THE GREAT NORTHERN, *SHIRE* AND YORKSHIRE, AND NORTH-EAST *RAILWAY COMPANIES*.

The petitioning companies were joint owners of a railway called the Methley railway, which they alleged the railway proposed authorised by the bill would compete. claimed a *locus standi* as such joint owners of the grounds of competition and diversions of traffic. The circumstances of the case were too special a character to be of value precedent.

Balfour Browne appeared for the petitioners. *Ledgard* for the bill.

Locus standi of Petitioners Disallowed.

Agents for Petitioners, Nelson, Barr & Nelson

Agent for Bill, Rees.

EAST LONDON RAILWAY BILL.

of (1) METROPOLITAN DISTRICT RAILWAY COMPANY.

April, 1883.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. PARKER, M.P.; Mr. MELDON, M.P.; and Sir F. S. REILLY.)

Notes—Repeal of Statutory Proviso for Completion of one Railway before another—Petition of Railway Company interested in Completion of Railway—Statutory Proviso not inserted at instance of Petitioners—Practice.

The bill repealed a proviso, contained in an Act obtained by the promoters in the previous session (East London Railway Act, 1882, sec. 4), that the railway authorised by that Act should not be opened for traffic until a certain railway extension (in connection with which was a terminal and interchange station) authorised by a previous Act of 1879 (Metropolitan and District Railways (City Lines and Extensions) Act, 1879), should also be completed and ready for the working of traffic. By the Act of 1879 (sec. 6) it had been provided that the railway extension above referred to should not be opened for traffic until the principal railway authorised by the same Act (called the Inner Circle Completion railway) was completed and opened. The petitioners were a railway company who were interested in the completion of the Inner Circle Completion railway, as well as in the railway extension and terminal station authorised in 1879, and they complained that if the repeal of the proviso contained in the Act of 1882 were authorised by the bill, the promoters would be at liberty to make the railway authorised by their Act of 1882, discharged from the obligation of first completing the railway extension authorised in 1879, which was in its turn, as provided by the Act of 1879, to be postponed to the opening of the Inner Circle Completion railway. On behalf of the promoters it was urged that the proviso of 1882 sought to be repealed by the bill had not been inserted at the instance of

the petitioners, and that their position in relation to the promoters was not affected by the bill:

Held, however, that the petitioners were entitled to be heard against the repeal of the proviso in the Act of 1882.

(*Per Cur.*) It does not matter how a clause came to be inserted in an Act of Parliament, if the repeal of it injuriously affects the petitioners.

The *locus standi* of the petitioners was objected to, because (1) it appears from the petition, though it is not distinctly so stated, that in the opinion of the petitioners the repeal, as sought by the bill, of the proviso in the promoters' Act of 1882, set forth in clause 4 of the bill, would have the effect of altering or prejudicing the existing rights and interests of the petitioners in respect of the completion by the Metropolitan railway company of what is known as the Inner Circle railway, but the promoters contend, and are prepared to show by an accurate statement of the facts of the case, that that opinion is not well founded, and that the petitioners are not in respect thereof entitled to be heard against the bill; (2) the relations of the petitioners with the promoters under the Acts of 1879 and 1882 are not affected by the provisions of the bill, or, if in any way affected thereby, are not so affected as to entitle the petitioners to be heard against the bill; (3) the promotion by the Metropolitan railway company of the bill referred to in the petition, and the objects of that company in such promotion (whatever those objects may be) do not entitle the petitioners to be heard against the said bill of the promoters; (4) the petition alleges no ground for a hearing according to practice.

Pope, Q.C. (for petitioners): By the Metropolitan and District Railways (City Lines and Extensions) Act, 1879, the Inner Circle Completion railway was authorised, in connection with which Inner Circle Completion was the Whitechapel Extension, which ran out from the Inner Circle railway at Aldgate by means of two little curves, and formed at Whitechapel a communication between the Metropolitan District and the East London railway, and between the Metropolitan and the East London railway, so as to establish a direct communication between the Metropolitan District railway in the south of London, and between the Metropolitan railway on the north of London, and the East London railway and the other railway companies, which by virtue of various arrange-

ments were using or running over the East London railway. The Metropolitan District company were, on the occasion of the promotion of that bill, anxious that it should be expressly provided that the Whitechapel extension should not be made without the completion of the Inner Circle railway, because they feared that it might be the policy of the chairman of the Metropolitan, who was also chairman of the East London railway company, to connect those two systems, and leave the Inner Circle completion undone, and the Metropolitan District railway shut out from their share in the East London traffic. In order to meet that difficulty Parliament, by section 6 of that Act of 1879, provided that the Whitechapel Extension should not be completed or opened until the Inner Circle itself was completed. That was how the matter stood until last year. Last year the East London railway company promoted a deviation from the original Whitechapel Extension line, whereupon the Metropolitan District company and the other companies interested in the original extension line objected, on the ground that if the East London company got power to make the deviation asked for, it might not be thought worth while to make the original Whitechapel Extension authorised in 1879, to which the obligation as to the Inner Circle completion was attached. Upon that opposition Parliament, in 1882, decided to allow the East London to make the deviation, but on condition that they should not make it until the original extension line was also completed and ready for traffic. The purpose of this bill is to repeal in express terms that provision inserted for the benefit of the companies interested. Our petition contains the following allegation:—"In the last session of Parliament the East London railway company applied for power to make a railway in Whitechapel about a quarter of a mile in length for the purpose of effecting a new junction between the East London railway and the railway No. 4, authorised by the Metropolitan and District Railways (City Lines and Extensions) Act, 1879. The said railway No. 4, authorised by the Act of 1879, is itself intended to terminate by a junction with the East London railway, and at that junction what is known as a terminal and interchange station between the system of Metropolitan railways (of which the undertaking of your petitioners forms an essential part) is intended to be constructed. Your petitioners being apprehensive lest the railway proposed by the promoters in their bill of 1882 should interfere with the construction of railway No. 4 and of the

said station, petitioned against the said bill upon that ground among others, and at their instance the following proviso was inserted in the clause of the bill which authorises the construction of the said railway: 'Provided that such railway shall not be opened for traffic (unless Parliament shall otherwise enact) until the line and terminal and interchange station at Whitechapel authorised by the said Act of 1879 be completed and ready for the working of traffic.'" That proviso was the condition which Parliament, after careful deliberation, imposed upon the making by the promoters of the railway authorised by their Act of 1882, and it is that proviso which it is the main object of this bill to repeal. The proviso is of especial importance to the petitioners, inasmuch as the opening of the Whitechapel extension line authorised in 1879 had been in 1879 postponed until the Inner Circle Completion railway had itself been opened.

Ledgard (for promoters): The bill does not alter the position of the Metropolitan District company from what it was last year. The petition alleges that the proviso in question, which we now come to repeal, was inserted at their instance. We deny that. They deposited a petition, which however, did not raise the question dealt with in that proviso, but they never appeared in counsel.

The CHAIRMAN: It does not matter how the clause got into the Act of Parliament if the repeal of it injuriously affects the petitioners.

Ledgard: The repeal of the proviso does not affect the position of the Metropolitan District company under the Act of 1879. The petitioners appear to be afraid not so much of what is to be done by this bill, but of what is proposed under another bill by their joint partners, namely, a severing of their connection with the joint undertaking of 1879. This bill does not affect the legal position of the Metropolitan District with regard to the East London. The bill does not prevent the completion by the Metropolitan District company jointly with the Metropolitan company of the railways authorised by the Act of 1879, or affect their position under the Act of 1882.

The CHAIRMAN: We think we must allow the *locus standi* of the Metropolitan District Railway Company, so far as the repeal of this clause goes. Agents for Petitioners, *Dyson & Co.*

Petition of (2) GREAT EASTERN RAILWAY COMPANY.

Repeal of Statutory Provision in former Act of 1879—Option of Petitioners as to Lease

of Promoters' Railway—Conditions of Exercise of Option affected by Non-completion of one Railway prior to Completion of other Railways as provided by former Acts.

The bill was further opposed by the Great Eastern railway company, who complained that their interests would also be injuriously affected by the proposed repeal of the proviso of the East London Railway Act, 1882. The petitioners were by section 56 of that Act, entitled to exercise an option of taking a share of the promoters' railway within six months after the completion of the railway deviation authorised by that Act, and the completion of that deviation was by the same Act (sec. 4) postponed to the completion of a railway called the Whitechapel Extension railway, authorised in 1879, which was itself postponed to the completion of the Inner Circle Completion railway, also authorised by the same Act of 1879. The latter railways would give a connection between the Metropolitan and District railways and the East London railway, and so materially affect the traffic of the latter company, and consequently its value for leasing purposes. The petitioners complained that if the statutory proviso in the East London Railway Act, 1882, were repealed by the bill, and the railway deviation thereby authorised were completed before the completion of the railways of 1879, they would be called upon to exercise their option as to the lease of the East London railway at an earlier period and under different circumstances to what was contemplated by section 56 of the East London Railway Act, 1882: **old, that there was such a disturbance of their existing status as entitled the petitioners to be heard against the bill.**

The *locus standi* of the petitioners was objected to on the following grounds: (1) it is alleged in paragraph 7 of the petition that inasmuch as the railway and terminal and interchange station at Whitechapel, referred to in section 4 of the promoters' Act of 1882, form part of railway No. 4, authorised by the Act of 1879, mentioned in paragraph 3, it is impossible under

the existing enactments for the promoters to open the railway authorised by the Act of 1882 (which is the railway now subject to the restriction which the bill seeks to repeal) until the Inner Circle Completion railway is completed, and this statement is made as if it were a necessary inference from the facts set forth in paragraphs 4, 5, 6 and 7, but the promoters contend that that inference is wholly unfounded, and even if it were not so, the petitioners cannot show that they have any such interest in the opening by the promoters of the railway authorised by their Act of 1882 as entitles them to be heard against the bill; (2) with respect to paragraph 8 of the petition, the participation by the petitioners in the lease of the promoters' undertaking is optional merely, and that option is not so altered or affected by the provisions of the bill as to entitle the petitioners to be heard against the bill; (3) the diversion of traffic referred to in paragraph 8, if any such diversion will arise, which the promoters do not admit, will be the consequence of the legislation of 1882, and will not be increased or affected by the provisions of the bill; (4) the provisions of the bill do not refer to, or in any way alter or affect the provisions of the Act of 1879 or any other existing provisions relating to the railway No. 1 mentioned in paragraph 9, and the petitioners have no such interest in the completion of that railway as entitles them to be heard against the bill.

Pember, Q.C. (for petitioners): Up to a certain point the same arguments apply in the case of the petitioners that applied to the case of (1) the Metropolitan District Railway Company. In the Metropolitan and District Railways Act, 1879, a clause was inserted, at the instance of the Great Eastern railway company, among others, providing that until the Inner Circle Completion railway itself was completed and opened, the promoting companies should not open the Whitechapel Extension authorised by the said Act. Then in 1882 there was a proposal on the part of the East London company to make another curve in connection with this Whitechapel Extension, and it was again arranged on our opposition that the proviso of 1879 should be applied to the curve of 1882, and that the opening of that curve in its turn should be postponed to the opening of the Whitechapel Extension line of 1879, and, therefore, by inference to the opening of the Inner Circle Completion itself. Such, then, being the arrangement made by Parliament as to the opening of these respective portions of line, which together make up the connections between the two Metropolitan railway companies and the East London railway company at Whitechapel,

where there is to be a junction and terminal and interchange station between those three railway companies, a further important clause as regards our interests, viz., clause 56, was inserted in that same East London Railway Act, 1882, which was to this effect, viz., "the Great Eastern railway company shall, at any time within six months after the date of the completion and opening of the railway by this Act authorised, or any other railway connecting the railway of the company with the railways of the Metropolitan railway company and the Metropolitan District railway company, or either of them, have the option, &c., to become one of the lessees of the undertaking of the Company, &c." In other words, Parliament enacted by clause 56 that we were to have that option within six months after the completion of the connection between this railway, or any other railway in lieu of it, and the Metropolitan and Metropolitan District railways, so that we were to be at liberty to wait six months to see what effect the authorised connection of the two Metropolitan railways would have upon the traffic of the East London railway company before we were called upon to decide whether it would be worth our while to take a share in the lease of the East London railway or not. The effect of the repeal of the statutory proviso as to completion contained in the East London Railway Act, 1882, will be that, within six months of the completion by the East London company of the short piece of railway authorised by that Act, which piece of railway would be, without the completion of the other railways authorised in 1879, only as it were a useless limb protruding in the air from the existing railway of the East London company at Whitechapel, we shall have to exercise an option before the railway connections which the East London Act authorised in 1870 are completed. The repeal of the proviso of 1882, with such consequences to our company, must affect our existing *status*, particularly as our relations with the East London Company, who form a junction with us near Liverpool Street and run into our station there, are of a most delicate and intricate character.

Ledgard (for promoters): There is a great distinction between the case of the petitioners and the Metropolitan District company. Clause 4 of the East London Railway Act, 1882, was not inserted at the instance of the Great Eastern company in any way.

Sir F. S. REILLY: The question is not at whose instigation that clause was inserted, but whom it benefits.

Ledgard: The petitioners complain that they may be called upon, if this bill passes, to exer-

cise their option of joining in the lease at a different time than they contemplated. That is no injury to them, or at any rate a totally unsubstantial one, and more of an inconvenience than an injury.

The CHAIRMAN: They also complain that they will be called upon to exercise their option under different circumstances. We must allow the *locus standi* of the Great Eastern Railway Company.

Locus standi of petitioners Allowed.

Agent for Petitioners, *Fearn*.

Petition of (3) METROPOLITAN BOARD OF WORKS.

Ledgard, on behalf of the promoters, conceded the *locus standi* of the Metropolitan Board of Works, at whose instigation the proviso contained in sec. 56 of the East London Act, 1882, was inserted, against the repeal of that proviso by the bill.

Bidder, Q.C., appeared for the petitioners.

Agents for Petitioners, *Dyson & Co.*

Petition of (4) THE HOUSE COMMITTEE OF THE LONDON HOSPITAL.

Repeal of Statutory Provision—Trustees of Hospital—Injury to Hospital from Authorised Railway—Apprehension of Injury at an earlier date than under existing proviso—Apprehended Abandonment of Alternative Line—Additional Injury from Increase of Traffic—Petitioners as Landowners Opposing Extension of Time-Bill.

The bill repealed a statutory provision contained in sec. 4 of the East London Railway Act, 1882, whereby the promoters were prohibited from completing and opening for traffic a short deviation line authorised by that Act, until another railway authorised by the Metropolitan District Railways (City Lines and Extensions) Act, 1879, which would act as a relief line, had been first completed and opened. The petitioners represented a hospital, and had come to an agreement with the promoters in 1882 to consent to the railway then authorised, provided that £10,000 were paid for the land belonging to the hospital taken for the purposes of the railway. They now claimed to be heard (1) on the ground that

ill would sanction the construction of deviation line before the railways rised in 1879, and the injury to the tal would therefore commence from rlier date; (2) that it would under ill be possible for the promoters to ruct the deviation line authorised in without constructing the alternative ay authorised in 1879, and, therefore, the whole traffic would be thrown on e which ran through their property to creased detriment of the hospital:

the petitioners, having accepted pay-
for their land, were in the position of
any landowners opposing an extension
re-bill and not entitled to be heard.

as standi of the petitioners was ob-
because (1) the bill does not contain
ion whereby any property, rights, or
of the petitioners, whether under their
; with the promoters referred to in the
r otherwise, are altered, prejudiced, or
r affected ; (2) even if the provisions
l would necessarily affect the con-
of the terminal and interchange
ferred to in the petition, which the
wholly deny, the petitioners do not
they have, nor have they, any such
that station or in the construction
in any other matters alleged or com-
in the petition as to entitle them to be
inst the bill ; (3) the petition alleges
l for a hearing according to practice.

Pollock (for petitioners) : The deviation authorised by the East London Railway runs through a corner of the London property, and the petitioners last year objected to their property being taken, but in order to avoid the expense of bringing the matter before Parliament, they came to an agreement with the railway company, by which agreement the railway company were to pay a certain sum of money in respect of the property to be taken, and at the same time it was understood that the spur line was not to be authorised by the Act of 1879, but in addition

1 (for promoters): The petitioners
2 refer to any understanding, as the agree-
3 scheduled to the bill, and speaks for

: Under the agreement we agreed to 0,000 and consent to the deviation line structured, the original line having been

already authorised by Parliament and being in contemplation to be constructed, and by the agreement severe restrictions were put upon the company as to vibration and injury to the hospital. When, therefore, the agreement was made two things were apparent ; first, that the original line would be constructed in addition to the deviation authorised by the Act of last year, so that the traffic would be divided between the original extension and deviation lines, and therefore the latter would carry less traffic, which would be to the advantage of the hospital ; secondly, that the completion of the deviation line was, by the Act of 1882, to be postponed to the construction of the original extension ; whereas now, if the East London company are authorised by the bill to repeal the proviso in their Act of 1882, it will be open to them to construct this deviation line without constructing the original extension line authorised by the Metropolitan District Railway (City Lines and Extensions) Act, 1879, at all. They will thus throw more traffic upon the deviation line of last year, to the injury of the hospital inmates, and also construct the deviation line at an earlier period than they can now, and so commence injuriously affecting the hospital at an earlier period than if they were compelled, as enacted by the proviso in their Act of 1882, first to complete the Whitechapel Extension authorised in 1879.

Ledgard (in reply): The petitioners have received £10,000 for the land we take, and are merely in the position of a landowner opposing a railway company coming for an extension of time-bill.

Mr. MELDON: As I understand, terms were made with the petitioners for the making of this line, and they accepted those terms, and never opposed the bill, although the proviso was not in the bill at the time.

Ledgard: That was so.

The CHAIRMAN: The petitioners are merely landowners, who have been dealt with, opposing an extension of time-bill. The Court are satisfied, without hearing Mr. Ledgard further, that the petitioners are not entitled to a *locus standi* against the bill.

Locus standi of petitioners Disallowed.

Agents for Petitioners, *Dyson & Co.*

Agents for Bill, Sherwood & Co.

FRESHWATER, YARMOUTH AND NEWPORT RAILWAY BILL.

Petitions of (1) SOUTHAMPTON HARBOUR BOARD; and (2) CORPORATION OF SOUTHAMPTON.

15th June, 1883.—(Before Mr. HINDE-PALMER, M.P., Chairman; Mr. PARKER, M.P.; Sir JOHN DUCKWORTH; and Sir F. S. REILLY).

Railway Monopoly, apprehended—Working Agreements, leading to practical Absorption of Smaller Railways—Transfer of Railways, how far distinguishable from Working Agreements—Railway Commissioners, control of, over Working Agreements—Diversion of Traffic from Harbour by Railway—Harbour Board, apprehending Loss of Trade through virtual Amalgamation of Railways—Municipal Corporation interested in Harbour Rates and opposing Diversion of Traffic—Pier, Power to acquire by Railway Company—Steamboat Powers of Railway Companies—Remoteness of Interest in Traffic.

In 1880, an Act was passed for the construction of a line of railway in the Isle of Wight between Freshwater, Newport and Yarmouth. The Act contained clauses authorising the company and other railway companies in the Isle to enter into comprehensive working agreements with the South-Western or Brighton railway companies. A bill was now promoted by the Freshwater company for extending its line by a short link, one-third of a mile long, to an existing pier at Totland bay; and it re-enacted in clause 40 the powers as to working agreements. The Southampton harbour board and the corporation of Southampton, who receive one-fifth of the harbour dues, opposed the bill on the ground that under clause 40 a railway monopoly might be created in the Isle of Wight in favour of the South-Western company; that traffic now passing from Cowes to Southampton might be sent *via* Totland Bay and Lymington, or Portsmouth and Ryde, or by other routes if such diversion were to the interests of the South-Western company; and that thereby both petitioners might suffer a serious loss of revenue. The promoters objected that the apprehended abstraction

of traffic was too remote, and that the complaint was really of past legislation:

Held, that although similar powers applied under statute to existing lines in the Isle of Wight, these powers might be brought into practical operation if extended to the link of communication now proposed, and that both petitioners were therefore entitled to a *locus standi*, limited to clause 40 and so much of the preamble as related thereto.

The *locus standi* of the Southampton harbour board was objected to, because (1) the petitioners are not the municipal or other authority having the local management of, nor are they inhabitants of, any town or district injuriously affected by the bill; (2) no land, property, right or interest of the petitioners will be taken or affected by the bill; (3) many allegations in the petition refer to powers sought in other bills now pending in Parliament, and are wholly irrelevant to the enquiry upon this bill; (4) the petitioners object to the bill upon the ground of an apprehended abstraction of traffic from their works at Southampton, and consequent diminution of their revenue through the powers proposed to be conferred upon the company by clause 40, of entering into working agreements with the London and South-Western railway company, and through the creation thereby of an alleged monopoly in the hands of the last-named company for the traffic of the Isle of Wight; but the apprehended diversion of traffic is too remote to entitle the petitioners to be heard; moreover, they have no such interest in that traffic as would entitle them to be heard even if their apprehensions were well-founded; (5) the bill contains no provision affecting the petitioners; and (6) they set forth no interest entitling them to be heard.

The *locus standi* of the corporation of Southampton was objected to, because (1) no property, right or interest of theirs will be taken or affected under the bill; (2) although they allege that they are the municipal authority of Southampton, and that the interests of the town and inhabitants will be injuriously affected by the bill, they set forth no injury which, according to practice, entitles them to be heard; (3) they object that, under clause 40, traffic in respect of which tolls, rates or duties are now payable to the Southampton harbour and pier board, may be diverted from Southampton, and the income of the board (one-fifth of which income the petitioners claim to be payable to them) thereby reduced; but even if the facts were as alleged, they would

not entitle the harbour Board, and *a fortiori* do not entitle the petitioners, to be heard against the bill; (4 and 5) the bill contains no provision affecting the petitioners, and they show no interest entitling them to be heard.

Saunders, Q.C. (for the Southampton harbour board): We should have objected to clause 40, even if it had merely enabled the South-Western Brighton companies to work this little railway Totland Bay, because this would have been a thin end of the wedge. But the clause is unusually comprehensive, and authorises "the contracting companies," namely, the South-Western and Brighton, the Isle of Wight (Newport junction), the Ryde and Newport, the Cowes and Newport, and the Freshwater companies, subject to the provisions of Part III. of The Railways Clauses Act, 1863, amended by the Regulation of Railways Act, 1873, to enter into agreements for—

"The construction, working, use, management, and maintenance by the contracting companies, or any or either of them, of their respective railways and works, or any part or parts thereof respectively; the management, regulation, interchange, collection, transmission and delivery of traffic upon, or coming on, or destined for the railways of the contracting companies, or any or either of them; the supply and maintenance under any agreement for the railway being worked and used by the contracting companies, or any or either of them, of engines, stock and plant necessary for the purposes of such agreement, and the employment of officers and servants for the conduct of traffic, the fixing, collection, payment, appropriation, apportionment, and distribution of the tolls, rates, income, and profits arising from the respective railways and works to the contracting companies, or any or either of them, or any part thereof; the payments, allowances, drawbacks, or rebates to be made by any one or either of the contracting companies to the other or either of them; the appointment of joint committees for carrying into effect any of the objects aforesaid."

This clause may mean virtual amalgamation, under which the South-Western or Brighton companies may absorb the Isle of Wight railways, and send all the traffic by Stonepoint by Stokes Bay and Ryde, instead of by Southampton and Cowes. The legislation of last year, which brought the Didcot and Newbury line to Southampton, and authorised a company, in conjunction with the harbour board, to erect a large waterside station there, may make it the interest of the South-Western company to avoid this new competition by getting possession of the Isle of Wight traffic, and diverting it to some point of the coast where they will be in sole possession of the railway transit. It is therefore most important that we should be heard to protect

ourselves against this abstraction of traffic; and the question of our right to interpose has in fact, been already decided this session, for, after argument, our *locus standi* was allowed against the *London and South-Western Railway (Various Powers) Bill*, which contained a clause substantially the same as this (*post*, p. 306). After our *locus standi* was allowed the clause was struck out of the bill.

Balfour Bruncie (for promoters): It was struck out for other reasons, and not on account of your opposition.

Saunders: It may be that those powers were struck out because the South-Western company would obtain the same powers under this bill. The route by Stonepoint (near the entrance to Southampton Water) will be opened up by means of the Swindon, Marlborough and Andover railway, which will run to a pier at Stonepoint with steamboats to the Isle of Wight. The South-Western company will command this route, having running powers down to the water's edge at Stonepoint, while the Freshwater, Yarmouth, and Newport line will come down to the water's edge on the opposite shore.

Pembroke Stephens, Q.C. (for corporation of Southampton): I also rely on the arguments used as to virtual amalgamation in this case, and its probable effects on the harbour revenues in which we are interested. Clause 4 of the bill authorises the construction of a railway five furlongs long, continuing the line sanctioned by Parliament in 1880, and terminating at Totland Bay pier. By clause 7, if the company purchase or take compulsorily under the powers of the Act any part of the lands or property of the Totlands Bay company, they may be required to purchase and take the whole of the undertaking of that company; and clause 13 provides that the two companies may enter into agreements for the lease, sale, or transfer to the company of the Totland bay undertaking. If such an arrangement is carried out, then under clause 40 the South-Western company would be able to divert the traffic by means of steamboats running from Totland Bay to Lymington, or some other point on the mainland.

Sir F. S. REILLY: The bill gives the South-Western company no power to run steamers from Totland Bay to the opposite coast; they must come to Parliament for fresh powers to do so?

Stephens: The South-Western company already have general powers to run steamers from the mainland to points in the Isle of Wight. We therefore ask to be heard not only against clause 40, but against the earlier clauses which will enable the South-Western company to

acquire the Totland Bay pier undertaking, and use it for the purpose of abstracting traffic now going by way of Southampton.

Sir F. S. REILLY: This pier is not yet part of the undertaking of the Freshwater and Newport company, and whether it will ever become so depends entirely on the will of the Totland bay company. Besides, your petition says nothing about the pier.

The CHAIRMAN: All you say is that the acquisition by the South-Western company of the control over or management of the Isle of Wight railways under the powers in clause 40 would create a monopoly which might be prejudicial to you. That is a very vague way of speaking of the pier.

Browne (in reply): The *South-Western Railway (Various Powers) Bill*, against which the Southampton harbour board were allowed to be heard, differed entirely from this bill, because it not only authorised working agreements, which is a small matter, but amalgamation. Clause 46 of that bill gave power to the South-Western or Brighton companies to lease or buy the undertakings of the island railway companies. It is true that clause 45 in the bill was substantially the same as clause 40 here; but the *locus standi* of the petitioners was granted against clause 46, which was the principal matter, and against clause 45 only as incident thereto. If the latter clause had stood alone, the petitioners would not, according to the precedents, have been allowed to appear. There is a great difference between powers to enter into working agreements, however large those powers may be, and powers to amalgamate. Under clause 40 in the bill the power to enter into working agreements is subject to the general law, which says that the railway commissioners must approve in the first instance, and that the agreements must be submitted for their revision every ten years. On the other hand, when Parliament authorises the sale or transfer of a railway undertaking, it gives that power free from all control. The distinction between the two cases is therefore clear.

Sir F. S. REILLY: It may be a clear distinction, but it is a narrow one.

Browne: Hardly so, for this Court has itself recognised the distinction, giving a *locus standi* even to remote interests in amalgamation cases; whereas, against working agreements, people are not allowed to be heard, unless their interests are directly affected. In this case there is no reasonable probability that the petitioners' interests will be so affected. Traffic destined for Southampton or the east, must still go by that port; traffic for the west of England might, it is true, be sent by Yarmouth and

Lymington, so avoiding Southampton. Southampton is not entitled to a *locus standi* upon this ground. It cannot claim more convenient route is opened up now passing through Southampton allowed to go by that route; but before the railway commissioners "Under this proposed working traffic may be diverted in a manner not only injure us, but will be prejudicial to public interest."

Sir F. S. REILLY: I see that in the the Southampton Harbour Board, *South-Western Railway (Various Powers) Bill* they distinctly objected to the working agreements clause as well as to the *locus standi* clause.

Saunders: And a *locus standi* was granted to us on both clauses.

Browne: Nothing was said about having a good ground of objection to the petitioners were allowed a *locus standi*. As to clause 40 in this bill, it is surplusage. The Freshwater, Yarmouth and Newport Act, 1880, sanctioned exact arrangements, in an identical clause 40 does is to extend those powers a little bit of new line down to Totland. The petitioners are really complaining of past legislation never asked for a *locus standi* against the 1880.

The CHAIRMAN: The present bill is the effect of past legislation, and may be the effect of what is required to bring that legislation into practical operation.

Browne: Under our existing Act we have a *locus standi* by way of Lymington instead of Southampton. So every ounce of traffic arising upon one of 13 miles, and upon other railways. The question is, whether upon a bill which poses to extend these powers to barely a third of a mile long, the petitioners is not too infinitesimal to be heard.

The CHAIRMAN: Would that not be a point for the Committee?

Browne: This Court has always taken itself to decide questions of remote interest. (*East and West Yorkshire Railway Bill, Petition of Methley Railway Company, supra*, p. 271; *London and North-Western Railway Bill, Petition of Whitehaven, Cleator and Egremont Companies, supra*; *Solway Firth Railway Bill, Petition of Solway Firth Railway Company*, 2, Clifford & Rickards).

The CHAIRMAN: The Court will give a *locus standi* to both petitioners limited to the matters in and so much of the preamble thereto.

Locus Standi Allowed, as limited.

ought to have a *locus standi* to ask for running powers and facilities so as to route open to the choice of the public. This is really a North British scheme for the north of Scotland, competing with existing routes for the Northern traffic, and still as it stands the North British comes to work and have the sole control of

This is shown by clause 61 of the bill which provides:—"The company on the one hand and the North British railway company on the other hand may, subject to the provisions

III. of The Railways Clauses Act, amended or varied by the Regulation of Railways Act, 1873, from time to time enter into agreements with respect to the following or any of them (that is to say): The use, management, and maintenance of the railway or any part thereof," &c., including the use of rolling stock, servants, &c.; the interchange, accommodation, and conveyance of traffic coming from or destined for the railway undertakings of the contracting companies and the division and appropriation of the revenue arising from that traffic." By clause 61 of the bill provision is made for the

of reciprocal running powers over the intended railway and those of the North British company, but the probability in effect the proposed railway will be taken over, as provided by clause 61, by the North British company, who will not supply rolling stock upon it and supply but become actual owners of the line, and will from the first have the whole use, management and management of the line. It is really a North British scheme, and practically a northern extension of the North British railway, and as such will compete with other lines, for through traffic from Scotland to England, and at a considerable expense as forming a through route by means of the lines authorised by the bill, whereas our passengers have to change at Glasgow.

CHAIRMAN: Suppose a passenger comes from Inverness, or any place north of Perth to Glasgow with a through ticket, you do not, under the Act of 1865, get any benefit of

Shiress Will: No; because we are only interested as regards traffic going to or from the North and South-Western, and not in traffic coming from the North and terminating in Glasgow; but in traffic between Scotland and England, which is in great measure tourist traffic and we are largely interested.

CHAIRMAN: Can we consider the tourists as the ordinary traffic on a question of *locus standi*?

Shiress Will: It will here be the principal traffic.

The CHAIRMAN: To what places from Inverness do you get the benefit of through tickets?

Shiress Will: Any place on or beyond our own line, which would include London, and every place on the Midland railway in connection with which we also bring London traffic as far as Glasgow; and if it is going further north *via* Perth, we have also an interest in it, because we have running powers and traffic facilities. We ask for a *locus standi* to claim similar running powers over the new line, in order to prevent traffic coming to and from the north of Glasgow being sent south by the North British to Carlisle instead of over our line. Clause 54, *inter alia*, empowers the company to run over and use certain stations named specifically, "and any other stations in Glasgow, which may be for the time being owned or used by the North British railway company." Those words would cover the use of the station in Glasgow, which we use jointly with the North British company.

Jeune (for promoters): Supposing the construction of that clause to be as contended on behalf of the petitioners, which I do not admit, I will at once concede them a *locus standi* on that point.

The CHAIRMAN: I do not think, as regards the general question of the right of the petitioners to be heard, much will turn upon the point whether the words of that clause would cover a station, of which the North British company had a joint use without the ownership. On the general question whether the bill amounts to an invasion of the petitioners' rights as recognised in the Amalgamation Acts of 1865 and 1866, referred to in argument, with regard to traffic north of Glasgow, there was a case before us very recently, *viz.*, *Alloa, Dumfermline, and Kirkcaldy Railway Bill, on the Petition of Great Northern and North-Eastern Railway Companies* (*supra*, 247), which appears very similar to this case, so far as recognition of the interests of the petitioners by previous legislation. Reference was made in that case to the *Alloa Railway Bill, 1879* (2 Clifford & Rickards, 134), and the decision of the Court was that the *locus standi* of the petitioners should be allowed in the same terms, *mutatis mutandis*, as that of the petitioners against the *Alloa Railway Bill, 1879*. Subject to what Mr. Jeune may have to urge, the Court suggest that a similar *locus standi* should be allowed to the petitioners in this case, if they would be satisfied with a similar limitation.

[The Solicitors for the petitioners signified their assent.]

Jeune (in reply) : The Scotch Amalgamation Acts of 1865 and 1866, which established the principles of maintaining a fair competition between the east and west coast routes, and of allowing either party to be heard against an extension of the other's railway system in competition with their own, were the real basis upon which the petitioners were allowed to be heard against both the *Alloa Railway Bill*, 1879, and the *Alloa, Dumfermline, &c., Bill* (*supra*, 247). In both these cases a *locus standi* was granted to the petitioning companies, because the Court considered that the bill came within the principle decided by the Amalgamation Acts of 1865 and 1866, viz., that the competing company should be given equal facilities over their rival's railways, and therefore over an extension of those rival's railways, whenever an extension was sought, as the Court evidently considered was virtually the case under both those bills, the railways in both cases being practically extensions of the Caledonian railway. In both those cases there was already existing in the petitioners a statutory right to have equal facilities given to them over an extension of the Caledonian railway system, as had been secured to them over the existing Caledonian railway by the Amalgamation Acts of 1865, and it was because the Acts of 1865 and 1866 were Amalgamation Acts, that the rights of the Glasgow and South-Western were recognised by having running powers, and through facilities conferred upon them. This is not an Amalgamation bill.

The CHAIRMAN : Is there not a clause in one of the Amalgamation Acts saying that the Glasgow and South-Western company should in like manner have the same facilities and so on over any line in substitution of the existing lines ?

Jeune : No ; if there had been, the petitioners might have come within the two cited cases ; but in the absence of such a provision they would not have been entitled to be heard, even if this were avowedly a North British railway extension scheme.

Mr. PARKER : You say there is no similar provision applying to the Glasgow and South-Western company to that which applied to the Great Northern and the Great Eastern in the cases cited, but the question seems to be whether these running powers were not given in pursuance of the policy of Parliament to enable the Glasgow and South-Western to communicate with Inverness.

The CHAIRMAN : The question is whether we must not take cognisance of the fact that the Legislature appears to have given the Glasgow and South-Western company a certain amount of interest in that northern traffic.

Jeune : For the purpose of competition cor-

tain rights of the Glasgow and South-Western have no doubt been recognised by their being given running powers as far north as Aberdeen, but they have no rights to Inverness from which our railway extends from Glasgow so that the competition in the hands of the North British company, must, if it arise at all, be of an unsubstantial character.

Mr. PARKER : Parliament appears to have given the Glasgow and South-Western running powers as far north as Aberdeen, not for the sake of Perth and Aberdeen traffic only, but for the sake of North of Scotland traffic. Now that a shorter route is proposed to the North of Scotland, would not the presumption be that the same policy should be adopted ?

Jeune : Where an amalgamation, as in 1865 and 1866, is proposed, Parliament recognises rights which it does not recognise in the case of a proposal to make a new line.

The CHAIRMAN : At present the Glasgow and South-Western company are interested in traffic from Inverness *via* Glasgow to Carlisle. Is it not enough for them to say that by the creation of the new line some of the traffic arising at Inverness, which they at present receive at Glasgow after it has come *via* Perth, may be diverted from them at Glasgow and passed on to other lines between Glasgow and Carlisle, either to the North British, in whose hands this railway is to be, or some other line whom it may be the interest of the North British to favour ? As things stand at present, the running powers of the Glasgow and South-Western over the line to the north, enable them to get the fair share of the traffic ; but the new line being entirely in the hands of the North British, or in close union with them, the trains might be run in such a way as to connect with the North British, and never fit in with those running on the Glasgow and South-Western railway.

Jeune : The case then resolves itself into an improvement of existing competition.

The CHAIRMAN : This is something more than improvement of existing competition. Improvement of existing competition is where you build another station, or make a small junction, or something of that sort. This is an entirely new line of considerable length.

Jeune : The petitioners' theory is that they will not be able to get hold of a traveller at Perth, but that the North British will get hold of him at Inverness. The North British are at Perth now ; therefore the Glasgow and South-Western are already in competition with the North British at Perth.

Mr. PARKER : But under the protection of running powers.

The CHAIRMAN : We think that the petitioners

Worsley-Taylor : We must practically make our stations at the intersections of roads.

The CHAIRMAN : Should you stop anywhere except at stations ?

Worsley-Taylor : Not for passenger traffic ; only to take up agricultural produce.

The CHAIRMAN : Is your tramway to be laid down on a road ?

Worsley-Taylor : It would be laid down on one side of the high road like an ordinary tramway.

The CHAIRMAN : There would be traffic along the road as well as the tramway traffic ?

Worsley-Taylor : The access to our station will be entirely stopped while the gates at the level crossing of the railway are closed.

Sir F. S. REILLY : If the tramway is laid along the public road, there must be some means of access to the station ?

Worsley Taylor : Yes ; but the means of access will be *pro tanto* interfered with. With regard to (3) competition, our tramway is authorised to form a junction with and run out of the Great Northern railway to a place called Eastoft Hall, passing through three villages on its way to Eastoft Hall and village. The railway against which we are petitioning starts out of the very same railway, about a mile lower down, and runs absolutely close alongside of our tramway the whole way up to Eastoft Hall, a distance of eight miles, crossing the tramway once or twice. It is true the railway is continued beyond the point where the tramway is to terminate, but the competition between the common points will be none the less. The point for decision is a new one, and has never actually been settled. (*Tramways, &c., No. 3 (Bury and District, &c.), Bill, 3 Clifford & Rickards, 101.*)

O'Hara (for promoters) : With regard to (1) interference with tramways, we concede a limited *locus standi* in accordance with the decision in the more recent case of the *Lansdowne Road, Rathmines, and Rathgar Tramway Bill* (2 Clifford & Rickards, 177). With regard to (2) interference with access, we do not take power to stop up the roads leading to the tramways which we cross, and we shall have to provide either bridges or gates for the road traffic. The petitioners have only an easement in the road along which their tramways are laid. At any rate, the interference with access, either to the tramways or to the station at Grey Green, would be only momentary, and does not entitle the petitioners to be heard. With regard to (3) competition, the amount of competition and the circumstances of the case would not entitle the petitioners to a *locus standi* if the proposed railway were a tramway, but as between railways and tramways the Court has never

allowed a *locus standi* on the score of competition. The traffic carried by a tramway is of a different kind, and is really an omnibus traffic, and the use of steam makes no material difference. The speed to which the tramway is limited, viz., eight miles an hour, prevents competition with a railway.

The CHAIRMAN : This is a case of a railway coming to compete with an authorised tramway. May not a tramway reasonably urge that the railway would compete with them and at an advantage ? Traffic would be more likely to be diverted from them on account of the greater speed of the railway.

Mr. PARKER : Would the railway have stations at the villages through which the tramway passes ?

O'Hara : It is probable that there would be stations wherever there was a productive traffic. The competition, if any, which will arise here will be analagous to that between railways and mail coaches, and the latter were always refused a *locus standi* against the construction of railways on the score of competition.

Worsley-Taylor : An omnibus proprietor has been heard against a tramway bill, although cab proprietors were refused a *locus standi* against the same bill. (*Woolwich and Plumstead Tramways Bill, 3 Clifford & Rickards, 321.*)

The CHAIRMAN : We do not mean to decide the abstract question, whether there could be competition between tramways worked by steam and ordinary railways ; we think the safest plan is to take each case on its own merits ; and we think that in this case, as the lines run parallel to one another, and to a certain extent supply the same district, there is a likelihood of abstraction of traffic, and a sufficient case of competition to entitle the petitioners to be heard on that ground.

Worsley-Taylor : That will be a general *locus standi* ?

The CHAIRMAN : Yes.

General *locus standi* of Petitioners Allowed.

Agent for Petitioners, *Jordan*.

Agent for Bill, *Hanly*.

tained in their separate bills, there should be no actual dealings with any of the lands by any one of the three companies without the assent of the other companies. Now comes this bill, under which the arrangements thus made might be upset. Assuming the Brighton company, for example, to have scheduled lands which, according to this understanding, they could not dispose of without consulting us, the bill would enable the Great Eastern to buy this land from the Brighton company, or they might hand over to the Brighton company the powers given to them in this clause.

Pember, Q C. (for the promoters): We are seeking powers to acquire land for the purposes of a depôt on the south side of the Thames, but there is nothing to attach those powers to any specific lands; still less shall we be able to acquire land over which the South-Eastern have compulsory powers. If they now possess such powers, all they have to do is to go and exercise them.

The CHAIRMAN: They would then be in the position of landowners?

Pember: Yes; they could give notice to treat to-morrow, and then we could not touch the land, because our power to agree with the three companies, or any of them, would not enable us to take away land which one of them had bought. Our position in the matter is this:—By the East London Railway Act, 1882, the Great Eastern company took power with the South-Eastern and the Brighton companies to lease the East London line, which runs from Liverpool-street station, on the north side of the Thames, to the New Cross station of the Brighton and South Eastern companies on the south side. Being, therefore, in conjunction with those two companies at New Cross, it was thought advisable to take the necessary steps for making a depôt at New Cross, either alone or as acting with the other companies. The other partners in our lease raise no objection, but the South-Eastern affect to consider that they occupy a different position to the other partners. The power we take, however, cannot hurt them any more than the other co-partners. They cannot get a *locus standi* by alleging that some damage may be done; they must show that some damage is done.

Sir F. S. REILLY: They complain of the generality and vagueness of the powers sought in the bill, but they themselves are open to the same objections, when they say they have reason to believe that the power sought by clause 49 is intended to be used with reference to this land.

Pember: Yes; they say we may take land

over which we have got Parliamentary power. That is not enough on which to found a *locus standi*. The possible damage they point out is entirely contingent on the truth of the allegation that we mean to take this land.

[*He was then stopped.*]

Locus standi Disallowed.

Agent for Bill, *Rees*.

Agents for Petitioners, *Stevens & Mortimer*.

KINGSTON-UPON-HULL DOCKS BILL

Petition of *EARLE'S SHIPBUILDING AND ENGINEERING COMPANY*.

30th March, 1883.—(*Before Mr. PEMBER, M.P., Chairman; Mr. PARKER, M.P.; MELDON, M.P.; Sir F. S. REILLY; and BONHAM-CARTER.*)

Right of Way—Dock Premises, Enclosures, Quays—Public Access to—Traders, opposed—Stopping-up of Roadway—Road Authority—Distinct Interest of Traders, Apart from Customary Practice—Petition, Insufficient Allegations—Interest Alleged in Right of Way, Sufficient.

A dock company promoted a bill which, *inter alia*, authorised them (by clause 4) to close with a wall their quays and dock premises, and exclude the public from access thereto. A shipbuilding firm whose premises adjoined the docks opposed a part of the bill, on the ground that it would sanction the closing of a public right of way from their premises to the dock quays, such right of way being much used by their workpeople in going to and from their homes, and also in repairing vessels in the docks. Apart from any legal interest in the right of way itself, the petitioners, as large traders, alleged that its closure would prejudicially affect their business. It was objected (1) that the petitioners contained no sufficient allegation of distinct interest; (2) that the right of way in question had been already extinguished by statute; and (3) that the corporation of Hull, who were the road authorities, were the proper representatives of the petitioners:

Held, after evidence, that the petitioners

prima facie case, entitling them to *standi* against the clause in ques-

standi of the petitioners was objected (1) no lands of theirs can be taken under the bill; (2) they have no right over the promoters' quays for men, goods, machinery, tools and other without carts or other vehicles; (3) not distinctly claim that they have a right. They are not, therefore, entitled to obtain a right which they do not possess, and do not distinctly claim. *Stephens*, Q.C. (for petitioners): We are business as shipbuilders at Hull, employing about 3,000 workpeople, and paying about £100,000 a year in wages. Our premises are on the Humber adjacent to the docks, and it is essential for the purposes of our business that we should have free and direct access to these docks and quays for our workmen, machinery and utensils. The bill provides that the company at any time may fence off and enclose the company's quays, &c., in such manner as they shall think fit, and may regulate access to the same by bye-laws, to be made by the company under the Harbours, Piers and Quays Act, 1847. We allege that the continued usage, we are entitled to at all times for ourselves, our workmen, with or without carts or other vehicles on our works and elsewhere on, to go and along the dock company's quays, and we allege that the powers sought by the bill, if granted, prejudicially affect our interests, and seriously interfere with the business we at present enjoy for carrying on our business by compelling us to traverse a public road.

Brown, Chairman of the company, said: they frequently had to fit out and go to work in the docks, and they and their workmen had always had access to these quays under the bill they might be excluded. In addition, the dock company seemed to intend to stop up a public footpath, existing from time immemorial between the petitioners' premises, the Humber and the dock premises, of which the petitioners and their predecessors had used up to two years ago. Until the dock company never laid claim to it.

MAN: This Court can hardly try a case about a right of way.

MR. LILLY: It does not appear by the evidence that the promoters propose to take powers to close the public road.

Stephens: Practically they do. There has been a *détour* in the road since the construction of the Victoria dock, but the right of way still exists, though in an altered form. It is said that the matter was settled by statute in 1877, but if the rights of the dock company were clear under statute, they would simply stop up this road and say nothing further about it.

Witness: It is not so much in respect of this road that we ask a *locus standi* as the stopping-up of our access to the docks. When the Act of 1877 was passed there were three footpaths.

The CHAIRMAN: The Act only refers to the closing of one.

Witness: There were still two other footpaths in existence. We obtained the consent of the local authorities to divert one, and we were therefore clearly under the impression that it was a public footpath.

Stephens: It is clear there is a dispute, and the question being in issue we ought to be heard with regard to it.

Mr. MELDON: Up to the present you do not seem to have shown that you have any right of way except as one of the general public?

Stephens: Even supposing we were only interested as one of the public, still as large traders using the road, we should, according to the precedents, have a *locus standi* against a proposal to stop it up. Here we are actually side by side with the dock premises, and any power to exclude us from access will affect us most prejudicially in the conduct of our business. The words of the clause apply not merely to docks already existing, but will authorise the company to enclose any hereafter constructed. The result may be that, as we are already enclosed by the dock premises on two sides, if the company purchased for dock purposes the land on the third side, we might have docks all round us and the river on the fourth side.

Herbert Brodrick, manager of the petitioning company, was examined and deposed that the Dock Company's Act of 1877 recited the purchase of certain lands from the petitioners, and contained a clause providing that the site and soil of the footpath over these lands should vest in the purchasers and that all rights of way over such footpath should be extinguished. But there then existed two footpaths. By subsequent arrangement with the local authorities the petitioners laid out a 10-foot footpath as a substitute for one of these, and this was used every day in going to and from their meals by probably 800 of the petitioners' workmen, as well as by the public.

Mr. MELDON: The substance of the evidence

appears to be that the land purchased by the dock company from the petitioners, as recited in the Act of 1877, did not include the footpath of which we are now speaking.

Stephens: It is difficult to reconcile the maps before us, but I am instructed that we shall be able to present a complete case before the Committee. Meanwhile, as we are traders largely interested in this right of way, apart from any special claim of ours with which the bill would interfere, we have such a *prima facie* case as supports a *locus standi*.

O'Hara (for promoters): I propose to call evidence to rebut that of the petitioners.

The CHAIRMAN: The Court cannot try this right of way. All we have to satisfy ourselves is that a *prima facie* case is made out by the petitioners.

O'Hara: They have not in their petition distinctly alleged any special user of this right of way, or that they are entitled to such user. All they really say is that "by virtue of long-continued usage," not user, they are entitled to the same use hereafter. But they do not say what their interests are. All they claim, or can claim, is that, in common with the public, if the public have this right of way, they have exercised this right. If that be so, the proper parties to protect them are the corporation of Hull, in whom the public roads and footpaths within the borough are vested, and whose *locus standi* is not objected to. (*Blackburn Improvement Bill*, 3 Clifford & Rickards, 129.)

Mr. MELDON: Why do you come to Parliament to build this wall?

O'Hara: Supposing there is a public right of way over our quays, we can only get rid of it by statutory powers, and the proper parties to oppose us are the urban sanitary authority, who will be heard in support of their petition on the subject.

The CHAIRMAN: Apart from any special right which the petitioners have in this access to the docks, they claim a right to appear against the closing of the access as large traders using it.

O'Hara: There is no distinct allegation to that effect in the petition, which merely says that, having shared in the enjoyment of this right of way, the petitioners ought to have special protection. They ought to have alleged that they had interests in it which were not adequately represented by the corporation. But they have no immemorial right on which they can rely, and what they really ask is a clause giving them new rights of way of the widest kind.

The CHAIRMAN: We feel that we cannot decide against the petitioners without deciding the question that they have no possible right of way

here. We do not think we can go so far and therefore allow the petitioners' leave against clause 4.

Stephens: And against so much of the preamble as relates thereto? We are named in the preamble.

The CHAIRMAN: There appears to be in the preamble which affects the question is merely a question affecting a clause. *Locus Standi Allowed* against clause 4. Agents for Bill, *Dyson & Co.*

Agents for Petitioners, *Martin & L*

LAMBETH WATER BILL

Petition of (1) SOUTHWARK AND WATER COMPANY.

12th April, 1883.—(Before Mr. F. M.P., Chairman; Mr. HINDE-PALM, Mr. PARKER, M.P.; and Sir F. S. B.)

Water Companies—Concurrent powers to same District—Power conferred upon one Company to acquire Lands and sink Fresh Wells, a Water therefrom—Competition, In Existing—Mutual Arrangements as to Supply.

Two Metropolitan water companies concurrent powers of supply of district, which was within the both companies. The bill, inter alia, provided that the promoting company "may from time to time acquire . . . any land not exceeding the whole twenty acres," such "in addition to any lands they are to acquire and hold under the provisions of the recited Act or this Act;" and clause 4 enacted that "the company may acquire lands, and on any other lands for being belonging to them, may sink shafts and supply water therefrom." The petitioners contended that the power contained in the latter clause would be a general power of acquisition in any locality, and that the company would therefore be enabled to acquire in the petitioners' district, sink shafts and supply water therefrom in competition with the petitioners.

with the petitioners, who claimed to be heard generally against the bill:

Held, that, although not entitled to a general *locus standi*, the petitioners were entitled to be heard against clauses 4 and 5 of the bill, and so much of the preamble as related thereto.

The *locus standi* of the petitioners was objected to, because (1) the petition does not allege, nor is it the fact that any lands or property of the petitioners can be taken or injuriously affected under the powers of the bill; (2) the bill does not seek to extend the limits of the promoters for the supply of water; (3) if the promoters have already the power to compete with the petitioners in any part of any district, within which the petitioners have statutory powers to supply water, the bill does not alter or add to such powers to compete; (4) no rights and interests of the petitioners, as those rights and interests at present exist, will be varied or affected by the bill; (5) the petition does not disclose any ground of competition which entitles the petitioners to be heard against the bill; (6) the charges taken by the promoters for a supply of water are not sought to be altered by the bill, and even if they were, such alteration would not entitle the petitioners to be heard against the bill; (7) the complaint of the petitioners as to the maximum charges of the promoters is a complaint of existing legislation, and does not entitle them to be heard against those charges on the bill, those charges not being altered by the bill; (8) the fact that the petitioners are promoting a bill for the amalgamation of their undertaking with that of the promoters does not entitle them to be heard against the bill, such proposed amalgamation being propounded without the consent of the promoters.

Sir R. Wyatt, Parliamentary agent (for petitioners): The Southwark and Vauxhall water company and the Lambeth water company have concurrent powers over a very large district, and the two companies have entered into an arrangement that certain districts should be supplied exclusively by each company. In a great number of parishes we have joint powers of supply to which the agreement applies, but there are places, which are exclusively within our limits of supply, and other places exclusively within the promoters' limits as well, to which the arrangement does not apply. The preamble of the bill recites that "It is expedient that the company be authorised to acquire additional lands for the increase of their works so as to

meet the increased and increasing demand for water, and also to raise additional capital," and clause 5 provides that "the company may for the general purposes of their undertaking (in addition to any lands they are authorised to acquire and hold under the other powers of the recited Act or this Act), from time to time by agreement acquire either by purchase, exchange, lease or otherwise any land not exceeding in the whole twenty acres:" and the above power to acquire lands is general and not restricted to any locality. Then at the end of clause 4 it is provided that "the company on such lands and on any other lands for the time being belonging to them may sink wells or shafts and supply water therefrom, and make, lay down, and maintain reservoirs, tanks, engines, conduits, mains and pipes, and may use such lands for the general purposes and convenience of their undertaking," so that they might go outside their limits and buy 20 acres of land in our district, where they have at present no power to supply, and may upon those lands, sink wells, &c., and supply water in competition with us. That would be both to invade our district and to establish a competition with us within it. It may not be the intention of the present directors of the Lambeth company so to act towards us in view of the existing arrangements, but the provisions of the bill would render it possible at any future period. We claim to be heard generally against the bill.

The CHAIRMAN: Have the Lambeth water company petitioned against your bill of this session?

Wyatt: Yes.

Bazalgette (for promoters): The petition discloses no ground for a *locus standi*. There is not a word in the bill, which either inaugurates a new competition with the Southwark and Vauxhall company, or makes the existing competition more effective. With regard to clause 5, enabling us to take twenty acres of additional land, that already occurs in the Lambeth Water Act, 1848, and is found in most Water Acts.

The CHAIRMAN: The contention of the petitioners is that clause 5 must be read in conjunction with clause 4, giving power to sink wells and shafts and supply water therefrom.

Bazalgette: The bill does not contain any provision for our supplying a new district, or for enlarging our existing district. Such a power as is contained in clauses 4 and 5 could not do more than facilitate the supply of our existing district.

The CHAIRMAN: It would authorise you to sink wells and supply water therefrom in part of the district which at present you have in common.

Bazalgette: Under our Act of 1848 we have power to contract with any party willing to sell the same for the purchase of land not exceeding 30 acres.

Wyatt: But that does not give you the power to sink wells on any land for the time being belonging to the company, and supply water therefrom.

Bazalgette: The words "supply water therefrom" do not relate to any extension of the district, and can only refer to the existing district of the Lambeth company.

The CHAIRMAN: Under clause 5, you might buy land in a part of the district which at present you enjoy in common with the Southwark and Vauxhall company, and under clause 4 you might supply water therefrom, and so increase competition there.

Sir F. S. REILLY: Is it the case that there is any district which the two companies actually supply in common?

Bazalgette: Yes.

The CHAIRMAN: If you erect works in the district you at present have in common, you not possessing those works at present, it creates competition, or increases your facilities of competing with the petitioners. Have you, under the Act of 1848, power to acquire land for the purposes specified in clause 4 of the bill?

Bazalgette: We have the power of acquiring land for the purpose of making additional tanks, aqueducts and other conveniences, *e.g.*, roads connected with the works of the company.

The CHAIRMAN: *Prima facie* those powers would appear to refer to existing works.

Wyatt: Those powers of the Act of 1848 do not include sinking wells and supplying water therefrom.

The CHAIRMAN: We think the Southwark and Vauxhall water company are entitled to a *locus standi* limited to clauses 4 and 5 of the bill; they have nothing to do with the question of capital.

Wyatt: Additional capital would render competition with us more serious. At any rate we are entitled to be heard against so much of the preamble as relates to clauses 4 and 5, and that part of the preamble recites: "It is expedient that the company be authorised to acquire additional lands for the increase of their works, &c., and also to raise additional capital by the creation and issue of debenture stock." I apprehend there would be no question that I should be entitled to be heard upon that.

The CHAIRMAN: You will be heard upon clauses 4 and 5, and so much of the preamble as relates thereto.

Locus standi of Southwark and Vauxhall Water Company *Disallowed*, except as against

clauses 4 and 5, and so much of the preamble as relates thereto.

Agents for Petitioners, *Wyatt, Hood Hoskins*.

Petition of (2) VESTRY OF LAMBETH

Practice—S. O. 134a—*Water Company—Local Authority, complaining of Powers and New Works—Allegation Injurious affecting of District, Inferes Specific—Sufficiency of.*

The bill, *inter alia*, authorised the construction &c., of reservoirs on any lands for the time being belonging to the company, in those proposed to be acquired under the powers of the bill. The petitioners were the local authority of the district, and supplied by the promoters, alleged in the petition that "the construction, maintenance, and use of reservoirs," thus authorised, "would be attended with public danger and inconvenience to your petitioners, their property, rights, interests, and to the public."

Held, that this was such an allegation of injury as rendered the petitioners entitled to the control of the petitioners as the local authority as to bring the case under S. O. 134a, in which case the jurisdiction of the Court was at an end, the petitioners being absolutely entitled to be heard as to the construction of reservoirs within their district. [In *Birmingham Corporation (Consolidated Bill, on the Petition of Guardians of Poor of Aston Manor, &c., supra*, followed.] The bill also authorised the raising of further capital by the issue of debenture stock, as to which the petitioners alleged that "your petitioners object thereto as well in their own private as in the public interest, as it will postpone the time when a reduction of the rate of the supply of water by the company should be made."

Held, that this also was a sufficient ground of the injury affecting of the petitioners in the district to satisfy the requirements of S. O. 134a, and take the case on

jurisdiction of the Court, and that the petitioners were accordingly absolutely entitled under that S. O. to be heard as to the raising of additional capital authorised by the bill.

The *locus standi* of the petitioners was objected to, because (1) the petition does not allege, nor is it the fact, that any lands of the petitioners will be compulsorily taken or injuriously affected by the bill; (2) the promoters deny that the land proposed to be taken under the powers of the bill are under the control of the petitioners, and even if they were, control over lands is not an interest therein, which would entitle the petitioners to be heard against the bill; (3) the petitioners do not allege that they are injuriously affected by the bill, and are therefore not entitled under S. O. 134a to be heard on their petition against the bill; (4) the promoters deny that the power as to reservoirs sought in clause 4 of the bill, and of which the petitioners refer, is a matter affecting them, or, if it affects them, affects them in such a way as entitles them to be heard against the bill; (5) the petitioners although they state that they are consumers of water, do not allege that they are injuriously affected by the bill as such consumers; (6) the petition does not allege or disclose any ground of objection, which entitles the petitioners according to the practice of Parliament to be heard against the bill.

Balfour Browne (for petitioners): The petitioners find that they are not the actual owners of the lands proposed to be taken, and therefore abandon their claim to be heard upon that ground, but we rely upon the two following allegations of our petition: (1) "Power is sought by clause 4 of the bill to enable the company to take any lands for the time being belonging to them, including those proposed to be acquired under the powers of the bill, to sink wells or shafts, and lay down and maintain reservoirs, tanks, engines, conduits, mains, and pipes; and our petitioners object, and allege that the construction, maintenance, and use of reservoirs upon the lands described in clause 4 of the bill, would be attended with great public danger and inconvenience, both to your petitioners, their property, rights and interests, and to the public;" (2) "that by clause 8 of the bill, the company seek power to raise £375,000 by the erection and issue of debenture stock, and your petitioners strongly object thereto as well in their own as in the public interest, as it will postpone the time when a reduction of the rates on the supply of water by the company should be made, and

respectfully submit that the power to raise such a large sum is entirely unnecessary, and is only applied for in view of the proposed amalgamation of the company with the Southwark and Vauxhall water company, and ought not to be sanctioned by your hon. House. That there are other clauses and provisions in the bill, which prejudicially affect your petitioners' property, rights and interests, and other clauses and provisions have been inserted therein for their protection." We are the local authority, and we claim to be heard under S. O. 134a.

The CHAIRMAN: We have already decided in the *Birmingham Corporation (Consolidation) Bill* (*supra*, p. 257) that we have no option in such cases.

Bazalgette (for promoters): According to S. O. 134a, it is necessary to allege that the town or district may be injuriously affected by the provisions of the bill. These petitioners do not allege that their district will be injuriously affected.

The CHAIRMAN: We have held that they need not say in so many words that their district will be injuriously affected, if what they say amounts to the same thing. In their allegation against clause 8 of the bill they give their reason why they object to it—viz., that it will postpone the time when the reduction of the rates might be looked for. That appears *prima facie* to be a statement that the district will be injuriously affected.

Balfour Browne: We say in so many words, "there are clauses and provisions in the bill which prejudicially affect your petitioners' property, rights and interests," meaning that the clauses and provisions of which we have been antecedently speaking prejudicially affect us.

Bazalgette: I submit that the allegations do not amount to a statement that the district would be prejudicially affected.

The CHAIRMAN (to **Balfour Browne**): We are inclined to give a decision in your favour, so far as the raising of additional capital is concerned. Would you be satisfied with that?

Browne: We want a *locus standi* with regard to works also.

The CHAIRMAN: Do you contend that the S. O., if it lets you in at all, lets you in against the whole bill?

Browne: Against any provision that may affect the district. Under the S. O. we may be heard against the bill if we allege that we are injuriously affected by any provisions of the bill, not merely by any provisions for the raising of additional capital.

Sir F. S. REILLY: How would your district be affected by the works? Do you mean that

the promoters might construct a reservoir which might be burst?

Broune: The words "attended with great public danger and inconvenience" would apply to the construction of reservoirs, or to the laying down of mains, pipes, and various things that would affect our district. "Danger and inconvenience" is an injurious affecting within the meaning of S. O. 134a.

Sir F. S. REILLY: Would the flooding of a small corner of the district by the bursting of a reservoir be a matter in respect of which the Vestry could petition as injuriously affecting your district?

Broune: I think so. We should be entitled to show before the Committee that the estimates are grossly insufficient, and that that being the case the reservoir must burst.

Sir F. S. REILLY: The district in the S. O. appears to mean the ratepayers in the district. Does the Vestry represent the ratepayers with reference to the physical danger of the bursting of a reservoir?

Broune: They represent them in all sanitary matters, and are the road authority also, and the bursting of a reservoir would affect the district by destroying the roads.

Bazalgette: There is no recital of the deposit of plans and sections, and there is no obligation in the bill to carry out any specified works.

The CHAIRMAN: We think we must construe the words "public danger and inconvenience" in the petition in the petitioners' favour, as if they had alleged that the district would be injuriously affected. If the petition had said in so many words that the district would be injuriously affected we do not think we could have got over the words of the S. O. Therefore we must give you a *locus standi* on the question of raising additional capital, and also, following the words of the petition, on the question of the construction, maintenance, and use of reservoirs upon the lands described in clause 4 of the bill, so that it will be—

Locus standi Disallowed except as to clause 8, which authorises the raising of additional capital, and so much of clause 4 as authorises the construction, maintenance, and use of reservoirs, upon so much of the lands described in clause 4 of the bill, as is within the district of Lambeth, as to which the petitioners are entitled to be heard by virtue of S. O. 134a.

Agent for Petitioners, H. J. Smith.

Agents for Bill, Dyson & Co.

LANCASHIRE AND YORKSHIRE RAILWAY BILL

Petition of (1) WILLIAM ALFRED TURNER, ROBERT LEAKE and WILLIAM ALFRED (3) RICHARD TONGE and CHRISTOPHER (4) JOHN CHRISTMAS SEWELL and HUTTON; (5) F. J. REDDAWAY; and BENJAMIN TOULSON.

9th April, 1883.—(Before Mr. PEMBERTON, Chairman; Mr. HINDE-PALMER, M.P.; PARKER, M.P.; Mr. MELDON, M.P., and F. S. REILLY).

Obstruction of Access to Business Premises proposed Railway—Stopping up of Streets—Traders—Workpeople compelled to go distance to Works—Further cartage of necessitated—Alteration of Level of Streets—Railways Clauses Act, 1845, sec. 49—Power of Local Authority—Depreciation in Value of Property.

Practice—Separate Petitions of Owners, Lessees—Mortgagees—Executors and Trustees under a Will—Allegations of Petitioners and amplified by Statements of Counsel.

The bill authorised the closing of several streets in the immediate proximity of the business premises of the various petitioners who were owners and lessees of mills. Different petitioners all alleged injury affecting of their premises owing to the fact that, if the streets named in the petition were closed, their workpeople who in most cases have to go a greater distance between their homes and the works, the cartage of coals and raw materials to the works would also be for a great increase of expense than at present; that the level of the streets leading to the works was to be altered under the powers of the bill, and that, for the above reasons, the value of the respective properties was seriously depreciated, as to which evidence was given on behalf of some of the petitioners:

Held, that the injury to the petitioners' property was such as to entitle them to be heard against the construction of the railway proposed. [*Lancashire and Yorkshire Railway Bill*, 1 Clifford & Rickards, 235, 236.] It was objected in the case of petitioners

2) that they were not both entitled to be heard upon their separate petitions, petitioner (1) being in occupation, and, as the promoters contended, being owner of the premises affected by the bill, and petitioners (2) being merely mortgagees of the property. Petitioners (2) described themselves in their petition as executors of the late owner of the property, and their petition alleged "as such we are entitled to and have a mortgage charge upon such mills and the land forming the site thereof for a considerable sum of money." It was explained by counsel for these petitioners (and not contradicted on behalf of the promoters) that they were really trustees as well as executors for this property under the will of the late owner, and this statement was accepted by the Court, who allowed both sets of petitioners (1 and 2) a *locus standi* in respect of the same premises.

It was objected to petitioners (3 and 4) that they were respectively owners and lessees of the same premises, and it was submitted that both should not be granted a separate *locus standi*:

Held, however, that both petitioners (3 and 4) were entitled to be heard so far as the construction of the railway in the proximity of the property affected was concerned.

The *locus standi* of (1) William Alfred Turner was objected to, because (1) the petition is founded on the closing of certain streets in Pendleton, which are used by a considerable majority of the workpeople of the petitioner, whom the first paragraph of the petition alleges to be 550 in number. The petition alleges also that the closing of the streets will add to the cost of the carting of coal to the petitioner's mills, and that his property will be considerably depreciated in value thereby (paragraphs 4, 5, and 6.) The promoters submit that so far as the workpeople are concerned the petitioner cannot be admitted as their representative, and that any inconvenience arising from the closing of the streets in question is a matter for the inhabitants of those streets, which the petitioner does not allege himself to be and is not; and that the protection of the streets from undue interference is the special function of the local authority, who have petitioned against the bill upon this and other grounds, and whose *locus*

standi is not objected to; (2) the 7th paragraph of the petition complains of the alteration of the levels of certain streets in Pendleton, but it does not allege that the alteration will interfere with the access to the petitioner's mills, or that he is otherwise affected than the rest of the public. This too, as the promoters submit, is a matter within the province of the local authority, and of them alone; (3) the 8th paragraph complains that the construction of the proposed railway will isolate the property of the petitioner by placing it between two lines of railway. The promoters submit that this circumstance does not give a right to be heard against the bill; (4) the petition does not allege or disclose any right or interest or any ground of objection which, according to the practice of Parliament, entitles the petitioner to be heard against the bill.

The *locus standi* of (2) Robert Leake and William Alfred Turner was objected to on the following technical ground, viz: "That the petitioners claim to be heard as mortgagees of the Kingston Mills, Pendleton, of which mills one of the petitioners (namely, W. A. Turner) is the owner, and as such owner has petitioned against the bill upon the same grounds as are alleged in the petition of the mortgagees. The promoters submit that a mortgagee, unless in possession of the mortgaged premises, has no right, according to the practice of Parliament, to be heard against a bill, which he alleges to affect those premises, and that this is especially the case, when the owner of the mortgaged premises himself petitions." The general grounds of objection to the *locus standi* of the petitioners were the same as those taken to the *locus standi* of (1) William Alfred Turner.

The *locus standi* of (3) R. Tonge and C. Tonge; and (4) C. Sewell and E. Hutton, was separately objected to, because (1) the petitioners, R. Tonge and C. Tonge, state themselves to be, and petition as, owners of the property on the north side of Cheltenham-street, in the township of Pendleton, and of the mill, buildings, and premises thereon erected, known as Mosley Mills, and now in the occupation of the petitioners, J. C. Sewell and E. Hutton, fancy dress manufacturers. Messrs. Sewell and Hutton also petition against the bill upon the same grounds and in nearly the same terms as Messrs. R. and C. Tonge, instead of joining in the petition of their landlords, which, perhaps, would have been the more convenient and economical process. The promoters submit that landlord and tenant ought not to be heard separately with respect to the same allegations of grievances affecting the demised property, and that such hearing would be con-

trary to the practice of Parliament. Apart from the question of both sets of petitions being heard in respect of injury to the same property, viz., Mosley Mills, the *locus standi* of both sets of petitioners were objected to on similar grounds, those grounds being practically identical, *mutatis mutandis*, with those taken (*supra*) to the *locus standi* of (1) Messrs. R. Leake and W. A. Turner in respect of Kingston Mills, Pendleton, with the exception above appearing, that it was not disputed that (3) Messrs. R. and C. Tonge, and (4) Messrs. Sewell and Hutton, were respectively owners and lessees of Mosley Mills, in the ordinary acceptance of such description.

Shireess Will (for (1) W. A. Turner): The bill takes power, *inter alia*, to acquire the soil of, and stop up, certain streets, and extinguish all rights of way in them, and the petitioner claims a *locus standi* on the ground that the access to his business premises will be interfered with. The petitioner is the owner of certain spinning and manufacturing mills situate in Cobden-street, Pendleton, where he carries on business and employs 550 workpeople. The result will be that these workpeople, instead of going direct to their work as at present, will have to traverse an extra distance, in the case of some of them, who go home to their meals twice a day, and so make six journeys between their homes and the mills, of between two or three miles and in some cases as much as four miles per day. Coal is at present carted to the petitioner's mills along the streets proposed to be stopped up, and if they are so stopped up, it will have to be carted an extra distance of about 800 yards on the double journey to and from the mills, and consequently at an extra cost. We consume about 140 tons of coal per week. The same extra distance will have to be traversed by raw material coming to the mills. The consequence of compelling the workpeople to go an extra distance will certainly be that the petitioner will lose many of his hands, and the general effect of making the railway as proposed on the south side of the mills, will be to isolate the mills, which are already bounded at the north end by the main line of the Lancashire and Yorkshire railway. This isolation will most materially depreciate the value of the property. The promoters also take power to alter the level of a road, which they do not propose to stop up entirely, by 4 ft. 6 in., and to make a gradient of 1 in 20.

The CHAIRMAN: Are the local authorities petitioning?

Ledgard (for promoters): Yes; and we do not object to their *locus standi*.

Will: That would not, according to decided cases, affect the right of an owner to appear,

where the access to business premises was obstructed.

Sir F. S. REILLY: Is there any provision made for foot-bridges over the principal streets leading to the mills?

Will: None whatever. In this case we have accesses by four or five different streets, which would be shut up. With regard to the petition of (2) Robert Leake and W. A. Turner, the petitioners claim to be heard in respect of the same mill. They allege, "That your petitioners are the executors of Wright Turner, late of Pendleton, Esquire, deceased, who formerly carried on business at Kingston Mills, Pendleton, aforesaid, and as such are entitled to and have a mortgage charge upon such mills and the land forming the site thereof for a considerable amount of money." The rest of the petition is the same as that of (1) W. A. Turner. These petitioners are in fact the legal owners of the property, and, according to the decisions of this Court, both owners and occupiers are, upon such a question, entitled to be heard. (*Lancashire and Yorkshire Railway Bill*, 1 Clifford & Rickards, 235.)

Ledgard: The petitioners only state themselves to be executors in their own petition.

Will: Their position is this. The tenant, W. A. Turner, succeeded to the property from his father, Mr. Wright Turner. Having done so, he mortgaged it to the trustees under his father's will for £27,000, he being himself one of the trustees. The petitioners are those trustees, as well as being executors, and having lent that £27,000 upon a mortgage in the ordinary way, they have the legal estate in the premises. They describe themselves as the executors of the former mill-owner adding "and as such we are entitled to and have mortgage charge upon such mills."

The CHAIRMAN: Is there any advantage in having a *locus standi* on both the petitions?

Will: They are distinct interests. If the mortgagees for so large an amount did not appear before the committee, it would look as if they anticipated no injury to the mill. Both petitioners allege depreciation in the market value of the property.

The CHAIRMAN: A lessor and a lessee have distinct interests. The lessee might come to an arrangement with the railway company for his terms.

[Mr. William Radford, Surveyor, called by Will, substantiated the statements of counsel as to the additional distance which workpeople, and also coal waggons, &c., would have to come, if the streets were stopped up as proposed by the bill, and it was shown that the majority of the workpeople (at least 57 per cent.) lived to

the south of the mills, where the railway was proposed to be made.]

Ledgard (in reply) : With regard to the position in which (2) R. Leake and W. A. Turner stand, it is important to understand whether they are legal owners of Kingston Mills in the ordinary acceptation of the term or merely mortgagees. The petitioner (1) W. A. Turner in his petition clearly states himself to be the owner, and R. Leake and W. A. Turner state that they are the executors of the deceased Mr. Turner, and as such they have a mortgage charge upon the mills.

The CHAIRMAN : I think we have admitted an equitable mortgagee.

Ledgard : There have been several cases in which it was proposed to alter the constitution of public trusts, where the nature of the security, *e.g.*, rates or tolls, would be affected, and in those cases mortgage creditors have been let in, but I do not know of any case, which would serve as a precedent for an ordinary mortgagee being let in as well as the holder of the property.

Sir F. S. REILLY : With reference to any effect that this case might have as such a precedent, this is not a case of an ordinary mortgagee. There are various differences from the case of an ordinary mortgagee, and among others it has been stated that these petitioners are mortgagees as trustees; that they are trustees for other members of the late Mr. Wright Turner's family, who have an interest contingent upon the death or life of the present Mr. W. A. Turner.

The CHAIRMAN : As the case stands now it has been stated, and not contradicted, that the petitioners, Messrs. R. Leake and W. A. Turner, are trustees and executors, and owners of Kingston Mill, and that Mr. W. A. Turner is the tenant and occupier under them, so that the question whether a simple mortgagee is entitled to a *locus standi* will not be raised in this case.

Ledgard : At any rate it is clear that one petition would in this, as in similar cases, have answered the purposes of both sets of petitioners. The right to be heard of both of the petitioners depends upon whether such a substantial injury will be done to them in respect of these business premises as to bring them within the rule of the decided cases. It is a question of degree. With regard to the workpeople employed at the mill, they only suffer inconvenience in common with the rest of the inhabitants, and they are represented by the local authority, who will appear with regard to any injury done to the streets.

[Mr. William Hunt, called by *Ledgard*, deposed : That he agreed with the witness, Mr.

Radford, as to the additional distance the majority of workpeople at Kingston Mill would have to come, if the streets named in the bill were stopped up. That, as to the cartage of coal, the distance would be 100 yards less each way than the figures given by Mr. Radford; that where the level of the street was altered the gradient would be with the load going to the mill. That the alteration of the level of the streets, not necessitating a gradient of more than 1 in 20, would be effected under the Railways Clauses Act, 1845, sec. 49, which was incorporated with the bill, and did not require a special provision.]

The CHAIRMAN : We think both the petitioners are entitled to a *locus standi* on their petitions.

Ledgard : It is an omnibus bill. It is the Pendleton line only that they are entitled to appear against.

Sir F. S. REILLY : Against so much of clause 5 as authorises railways Nos. 1 and 2, and so much of the preamble as relates thereto. Clause 25 gives power to stop up the streets; of course the petitioners would have a *locus standi* against that clause.

Sutton, on behalf of (3) R. and C. Tonge, and (4) J. C. Sewell and E. Hutton, who claimed to appear as respectively owners and lessees of Mosley Mills, Pendleton, urged the same objections to the closing of the streets named in the bill, *mutatis mutandis*, as those put forward on behalf of petitioners (1 and 2). Evidence was given by the petitioner, E. Hutton, that in his opinion the construction of the railway close to Mosley Mills as proposed by the bill, would depreciate the annual value of the mills by one-half. A similar *locus standi* was allowed to both sets of petitioners (3 and 4) as in the case of petitioners (1 and 2).

Ledgard on behalf of the promoters conceded a similar *locus standi* to (5) F. J. Reddaway, and (6) Benjamin Toulson.

Sutton appeared as counsel for petitioners (5 and 6).

Locus standi of (1) William Alfred Turner Allowed against so much of clause 5 as authorizes the construction of railways Nos. 1 and 2, and so much of the preamble as relates thereto.

Locus standi of (2) Robert Leake and William Alfred Turner Allowed against so much of clause 5 as authorizes the construction of railways Nos. 1 and 2, and so much of the preamble as relates thereto.

Locus standi of (3) Richard Tonge and Christopher Tonge Allowed against so much of clause 5 as authorizes the construction of railways Nos. 1 and 2, and so much of the preamble as relates thereto.

Locus standi of (4) John C. Sewell, and E.

Hutton *Allowed* against so much of clause 5 as authorizes the construction of railways Nos. 1 and 2, and so much of the preamble as relates thereto.

Locus standi of F. J. Reddaway *Allowed* against so much of clause 5 as authorizes the construction of railways Nos. 1 and 2, and so much of the preamble as relates thereto.

Locus standi of Benjamin Toulson *Allowed* against so much of clause 5 as authorizes the construction of railways Nos. 1 and 2, and so much of the preamble as relates thereto.

Agents for petitioners (1, 2, 3, 4, 5, 6), *Phelps, Sidgwick & Biddle*.

Agents for Bill, *Dyson & Co.*

LEEDS, CHURCH FENTON AND HULL JUNCTION RAILWAY BILL.

Petition of (1) THE PROMOTERS OF THE EAST AND WEST YORKSHIRE UNION RAILWAY BILL.

23rd April, 1883.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDR-PALMER, M.P.; Mr. PARKER, M.P.; Sir F. S. REILLY; and Mr. BONHAM-CARTER.)

Railways—Competing Schemes—Competition by means of Running Powers over third Company's Line—Powers of Agreement—Through and Local Traffic.

The bill authorised the construction of a railway from Leeds to Church Fenton, where it formed a junction with an authorised railway, over which the promoters took running powers to Drax, where the authorised Church Fenton railway formed a junction with the Hull, Barnsley and West Riding Junction railway. The petitioners had a bill before Parliament for a railway from Leeds to Drax, where it joined the Hull and Barnsley railway, and both bills took extensive powers of agreement with the Hull and Barnsley railway company. The petitioners claimed to be heard, first, on the ground of competition between Leeds and Drax, by means of the running powers taken by the promoters in the bill over the authorised Church Fenton railway, and, secondly, on the ground of competition between Leeds and Hull, by means of the authorised agreements with the Hull and Barnsley company. The promoters objected that their line and the proposed East and West Yorkshire railway would accommo-

date a different traffic derived from a different district

Held, however, that the bill would, by means of running powers and of agreements, create such a competition between the points above enumerated as to entitle the petitioners to be heard.

The *locus standi* of the petitioners was objected to, because (1) the railways proposed to be authorised by the bill will not form a junction with nor do they go to the same point as the petitioners' railway; (2) the petition does not allege or show that any such competition between the petitioners and the promoters will be caused by or result from the bill if passed, or by or from the works to be thereby authorised, as would, according to the practice of Parliament, entitle the petitioners to be heard against the bill; (3) the petitioners do not allege or show that the bill contains provisions for taking or using any lands of the petitioners; (4) none of the powers of the bill affect the petitioners, nor do the allegations in the petition show that the petitioners have any such interest in the bill as entitles them to be heard against it.

Ledgard (for petitioners): We have in Parliament this year a bill for a line from Leeds to Drax, making a junction at Drax with the authorised Hull, Barnsley, and West Riding railway (which goes from Drax to Hull) and by means of interchange of traffic affording a new and direct route between Leeds and Hull, of course accommodating local traffic upon the way. The line proposed to be constructed under the powers of this bill is a line from Leeds to Church Fenton, joining there the authorised Church Fenton, Cawood and Wistow railway, which is a line authorised from Church Fenton to Drax, where it joins the Hull, Barnsley, and West Riding Junction railway. The bill as deposited takes running powers over the Church Fenton and Wistow railway from Church Fenton to Drax; and the promoter's line, therefore, forms a line in competition with our own between Leeds and the common point Drax, where we both join the Hull and Barnsley Junction railway. Apart from local traffic, the whole object of the two railways is to give, by the power of entering into agreements with the Hull and Barnsley railway company, a new route between Leeds and Hull; and by means of running powers taken over the authorised Church Fenton line to Drax, the promoters will be in direct competition with us, as between Leeds and Drax. (*Sutton and London and South Western Junction Railway Bill*, 3 Clifford & Rickards, 228.)

the CHAIRMAN: Have the promoters petitioned against your bill of this session?

Edgard: I believe not.

Sir F. S. REILLY: What is the distance between the two lines in this case?

Edgard (for promoters): A considerable space, amounting to six or seven miles; and Leeds and Selby railway, as well as the River Ouse and its valley and a mountain, intervene between them. The running powers over the authorised Church Fenton line as far as Drax will be struck out of the bill.

the CHAIRMAN: We must, according to our usual practice, take the bill as deposited.

Edgard: The traffic served by the proposed ways of the promoters and petitioners respectively, will be a different traffic, and derived from a different district. In addition to that, one is a mineral line, and the other a passenger line.

Edgard: The East and West Yorkshire railway is both a passenger and mineral line, and the two companies will have power by agreement with the Hull and Barnsley company to carry their traffic on to Hull.

the CHAIRMAN: We must take the bill as deposited, by which running powers are taken from Church Fenton to Drax, creating a direct connection between the line of the promoters and the East and West Yorkshire Union railway, between Leeds and Drax, and so on to Hull. We will, therefore, allow the *locus standi* of the East and West Yorkshire Union Railway Company.

Locus standi of Petitioners Allowed.

The objections to the *locus standi* of (2) Hull, Barnsley, and West Riding Junction Railway Company having been withdrawn by the promoters of the bill, the Court Allowed the *locus standi* of these petitioners also.

Edgard, Q.C., appeared for the petitioners; Edgard, for the promoters.

Agent for Petitioners (1 and 2), Rees.

Agent for Bill, Hanly.

LIVERPOOL IMPROVEMENT BILL.

Promotion of JAMES WHITEHEAD HAIGH AND OTHERS.

April, 1883.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. PARKER, M.P.; and Sir F. S. REILLY.)

Closing of Canal—Rights of Adjoining Owners of Property.

The petitioners claimed to be heard as owners of land adjoining a basin, which they contended

was part of a public canal, and which the bill authorised the promoters to close. The petitioners alleged that their property, which was let to various traders and merchants, would be injuriously affected by the closing of the basin in question, as to which they claimed, as adjoining owners of property, a right of user for loading and unloading coal, &c., as well as a right of erecting wharves, cranes, &c. (*Coombe Hill Canal Navigation Bill*, 1 Clifford & Rickards, 215; and *Glasgow & South-Western Railway Bill*, 3 Clifford & Rickards, cited 55). The promoters denied the alleged ownership of the petitioners in the land immediately adjoining the basin proposed to be stopped up, which basin they maintained was not a part of the canal, over which the petitioners or the public had any statutory rights, and called evidence to show that whatever use the petitioners were accustomed to make of the basin in question, and whatever privileges they might have in respect of it, were by leave of the canal company, and were paid for by the petitioners in the form of an annual rent. Conflicting evidence as to these points was adduced on the part of the promoters and petitioners, and the case also partly turned upon the construction of the Local Act, authorising the making of the canal (10 Geo. 3, cap. 114), the facts of the case making it of no value as a precedent. In the end the Court allowed the petitioners a limited *locus standi* as to the closing of the basin in question, at the same time expressing a doubt as to the right of the petitioners to be heard.

Locus standi of Petitioners Disallowed, except as against clause 19 of the bill (nothing being said as to the preamble).

Rutherford, Parliamentary agent, appeared for the petitioners; Potter, Q.C., for the bill.

Agents for Petitioners, Hedges & Brandreth.

Agents for Bill, Sherwood & Co.

LONDON AND EASTBOURNE RAILWAY BILL.

Petition of (1) LONDON AND SOUTH-WESTERN RAILWAY COMPANY.

15th March, 1883.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE-PALMER, M.P.; Mr. PARKER, M.P.; Sir JOHN DUCKWORTH; Sir F. S. REILLY; and Mr. BONHAM-CARTER.)

Running Powers—Statutory Purchase of—Apprehended Interference with Train Service of Purchasers—Right of Purchasing Company to Oppose Running Powers to Third Company—

Ordinary Rule as to, where Powers not Exclusive—Arbitration as to Running Powers—Railway Companies Arbitration Act, 1859.

Under a statutory agreement the London and South-Western railway company purchased, by the payment of a lump sum, running powers over portions of the London, Chatham and Dover railway system, including the line between Herne-hill and Ludgate-hill, and at their sole expense constructed a short junction uniting the two systems at Herne-hill. A bill was now promoted by an independent company who sought running powers over the Chatham company's line from Beckenham to Victoria and Holborn Viaduct. The South-Western company opposed the bill on the ground that their traffic was at present delayed through the crowded state of the Chatham line between the points over which their right of user extended, and that the existing obstruction would be increased under the bill. The Chatham company had petitioned and their *locus standi* was conceded:

Held that the terms upon which the petitioners had acquired running powers gave them no such exclusive or exceptional rights over the Chatham system as took the case out of the ordinary rule that a company possessing running powers over another line could not be heard to object to the grant of similar powers to another company, and *locus standi* therefore disallowed.

The *locus standi* of the London and South-Western railway company was objected to, because (1) the bill contains no provisions for taking or using any part of the lands, railway stations, or accommodations of the petitioners, or for running engines or carriages upon or across the same; (2) the railways over which running powers are sought by the bill, and which powers are objected to by the petitioners, are the property of the London, Chatham, and Dover railway company. That company has petitioned against the bill, objecting to the running powers, and their *locus standi* is conceded; (3) the petitioners' right to run over the London, Chatham and Dover railway is, as appears by their petition, secured to them by an agreement confirmed by Act of Parliament, and is not an exclusive one; their rights under such agree-

ment are not proposed to be affected in any way by the bill; (4) the right of the petitioners to run over the London, Chatham and Dover railway is not sufficient to give them a *locus standi* to be heard against the powers of running over that railway sought by the bill; (5) the petitioners have no such interest as entitles them, according to practice, to be heard against the bill upon any of the grounds specified in their petition.

Clerk, Q.C. (for the London and South-Western Railway company): The bill proposes to authorise the company, and all persons and companies lawfully using their railways, to run over and use with their engines and carriages for the purpose of traffic of every description the railways of the Chatham company lying between Beckenham and the Holborn and Victoria stations. In 1865, in consideration of the sum of £316,000 paid by us to the Chatham company, they gave us running powers over portions of their line intervening between our Clapham Junction and Tulse-hill stations and Ludgate-hill; and this agreement was confirmed by the Dover and South-Western Companies Act, 1865. In addition, we were compelled to bear the entire cost of the junction railway between Tulse-hill and Herne-hill, which completes the communication between our system and theirs. In conformity with this agreement we now run trains between Tulse-hill and Ludgate-hill, and between Clapham Junction and Ludgate-hill, but frequent delays occur to our traffic owing to the crowded state of the line. For this reason we are obliged to limit our train service, and we ask that no additional use of the Chatham lines, involving additional obstruction and delay to our traffic, should be sanctioned by Parliament, unless provision be made for the widening of the Chatham railways and enlargement of the station proposed to be run over and used by the company.

The CHAIRMAN: The bill says that in default of agreement between the Eastbourne and Chatham companies, the terms under which the running powers are to be exercised shall be determined by arbitration in accordance with the Railway Companies Arbitration Act, 1859. Could the arbitrator go into the question raised by your petition?

Clerk: Certainly not. I admit that where a company have obtained running powers over another company's line they cannot be heard to object to the grant of powers running to a third company over the same line unless it can be shown that these further powers will interfere with the original grant. The decision in the case of the *Metropolitan Railway Bill*,

of the Great Northern Railway (1 Clifford & Stephens, 106), is not for the agreement there contained "so far as is consistent with the line by other companies." The case of the Metropolitan Railway Bill, on the Petition of the Great Western Railway Company & Rickards, 172), is also to be noted. The case most nearly in point is that of the Great Eastern Railway on the Petition of the Metropolitan Railway Company (1 Clifford & Stephens, 8), where Mr. Rickards said the question was whether the effect of the running powers might be to produce obstruction or a suspension of the Metropolitan Railway which would be inconvenient to the existing company. Our case here is different.

2. (for promoters): What the petitioners asking for is inconsistent, not with the decisions but with the common law question. The agreement of the petitioners is not with the promoters of the bill, with the Chatham company, who are against this bill, and who would not be entitled to object to any running power in their property inconsistent with their rights to other people. It cannot make sense that the petitioners here have running powers in a lump sum, paying for them by tolls or annual payments. Such a payment, and the possession of running powers, give the South-Western company no right to say to the Chatham company, "You shall admit no other line on your line." The petitioners are going to be allowed to go before a Committee to procure the insertion in their bill of a provision which they themselves want, namely, that the South-Western company shall have such running powers as may be necessary for their traffic, no matter whose line be thereby excluded. As the petitioners are no exclusive user, they have no objection to the grant of running powers to any other company. If they could show a right beyond that of mere user of the line, they might fairly ask to go before a Committee for the protection of that special interest; but the strength of a mere statutory agreement over the line of another company, which has never been allowed to intervene in the question whether anybody else has a right over the same line. The Metropolitan Railway Bill (1 Clifford & Rickards, 172), is an example, because there it was held "that the existing agreements gave the Great Western company priority" in the exer-

cise of running powers, "they conferred no exclusive rights, and as there was nothing in the bill to show that the petitioners would be deprived of their priority," they had no *locus standi*. Here the petitioners have not even a claim to priority.

The CHAIRMAN: We think there is nothing in this case to take it out of the ordinary rule, and we must therefore disallow the *locus standi*.

Locus standi Disallowed.

Agents for Petitioners, Birchem & Co.

Petition of (2) OXTED AND GROOMBRIDGE RAILWAY COMPANY.

Railway—Proposed Crossing by Bridge over Projected Railway—Locus Standi of Existing Company; Landowners' or Limited—S. O. 133 ("In what Cases Railway Companies to be heard")—Interference with Railway by taking of Land.

Practice—Allegations in Petitions, Insufficiency of—Railway "Crossed and otherwise interfered with"—Taking of Land inferred from this Allegation.

In a petition by a railway company against a bill for the construction of a new line, there were allegations (1) of competition; and (2) that the proposed line would "cross and otherwise seriously interfere with" the petitioners' authorised railway. The promoters admitted that they had scheduled the petitioners' land for the purposes of the crossing, and that had these petitioners distinctly alleged the taking of their land, they would have been entitled to a general *locus standi*; but they objected that the petition only disclosed a case of interference sufficient to support a limited *locus standi* under S. O. 133:

Held, that though the petition was not clear, the statement that the petitioners owned an authorised railway, which the promoters proposed to cross, raised the inference that the petitioners' land must inevitably be taken, and that they must therefore have the usual landowner's *locus standi*.

The *locus standi* of the petitioning company was objected to, because (1) the petition does not allege that any part of the lands, railways, stations or accommodation of the peti-

tioners will be taken or used under the bill; (2) no such competition will arise between the railways proposed by the bill and those of the petitioners as entitles them to be heard; (3) their authorised railway is purely a local one with its termini at Hurst Green and Groombridge, or (including the petitioners' running powers) between Tunbridge Wells and East Croydon, but the railway proposed for the bill does not pass through either of these places; (4) the proposed railway is one from Beckenham on the London, Chatham and Dover railway, to Eastbourne, and its primary object is to provide additional and improved railway communication between London and Eastbourne and the intermediate district, none of which places are or can be accommodated by the authorised line of the petitioners, even if it were constructed; (5) the reasons alleged by the petitioners for the rejection of their bill by the Committee of the House of Commons in 1882, and for the passing of their bill of 1881 by the House of Lords, even if true (which the promoters do not admit), have nothing whatever to do with the bill; and (6) the petitioners show no interests entitling them to be heard against the bill.

Balfour Browne (for the petitioners): The notices of objection say we do not allege that our land is going to be taken. What we say is: "Your petitioners strenuously object to the powers proposed to be conferred upon the company, to cross and otherwise seriously interfere with their said authorised railway, which might be exercised to the great detriment of your petitioners and of the persons using their railways."

Pope, Q.C. (for promoters): Undoubtedly we cross the Oxted and Groombridge line by a bridge, and for the purpose of constructing the abutments of the bridge we schedule and take some of the land which the petitioners have taken for their railway; but they have not alleged this fact in their petition, and according to practice they cannot amend this defect by supplying the allegation *aliunde*.

Browne: The petition does sufficiently raise the whole issue. We not only complain that the promoters "cross" our line, but that they will "otherwise seriously interfere" with it.

Pope: If the petitioners simply want to be heard as to the mode of crossing their line, or as to our taking a limited width of land at the crossing, I will concede this limited *locus standi*, but not a landowner's general right to be heard upon the whole petition.

Browne: This is a concession of the whole matter in issue. The promoters propose to cross our line by means of a bridge, and it is admitted that we are entitled to be heard with

respect to the crossing. But, according to the decisions, where a line is crossed, a landowner's *locus standi* is allowed to the company so affected. (*Rhondda and Swansea Bay Railway Bill*, 3 Clifford & Rickards, 201; *Burntisland Direct Mineral Railway Bill*, 1 Clifford & Rickards, 206; *Caledonian Railway Bill*, *ib.* 7.) It is unnecessary to assert that the promoters take our land; it is sufficient to say that they cross our railway, for the necessary inference is that they cannot do so without taking a portion of our land.

Pope: I do not dispute that the petitioners would have been entitled to a landowner's *locus standi* if they had alleged that their land was going to be taken; but they must be limited by their allegations, and that on which they rely only points to interference with their railway, as to which we concede their right to be heard. S. O. 133 gives a discretionary power to the Referees in such a case. In the *Thames Deep Water Dock Railway Bill* (3 Clifford & Rickards, 232), this point was raised, and the petitioners were not allowed a general *locus standi*.

Browne: There was no allegation there that the petitioners were landowners. Here, substantially, there is such an allegation.

The CHAIRMAN: The petition is not very carefully drawn, but we think it is sufficiently stated that the petitioners are the owners of an authorised railway which the promoters propose to cross, and we cannot avoid the inference that the petitioners' own land must be taken under the bill. They must, therefore, have the usual landowner's *locus standi*.

General *locus standi* Allowed.

Agent for Bill, *Ball*.

Agent for Petitioners, *H. E. Brown*.

LONDON AND NORTH-WESTERN RAILWAY (ADDITIONAL POWERS) BILL.

Petition of SOUTH LANCASHIRE AND CHESHIRE COAL ASSOCIATION AND TRADERS AND FREIGHTERS.

5th April, 1883.—(Before Mr. PEMBERTON, M.P. Chairman; Mr. PARKER, M.P.; and Sir F. E. REILLY.)

Traders and Freighters, Representing Class-Local Coal Association, Right of, to Represent Trade of District—Dock, Proposed Arrangements at, Complained of by Traders.

A railway company, owning a dock at Garst, promoted a bill which, *inter alia*, proposed

se 29, certain changes affecting the using the dock. A petition was ed against this clause, signed by and freighters, and by "The Lancashire and Cheshire Coal Asso-." The promoters conceded the andi of the petitioning traders and ers as representing a class, but ob- that the coal association could not on to represent the trade of the :

the authority of a decided case, that itioning association, as well as the and freighters, were entitled to the *locus standi* asked for.

(for promoters): I admit that the freighters are sufficient in number nce to represent a class, and that ore have a right to be heard against hich proposes to make a change in ments at Garston dock. But a so- iation cannot be taken, *ipso facto*, ; the coal trade of the district, and refore to their appearing.

Stephens, Q.C. (for petitioners): An rinciple is involved here, and I can- e accept the compromise proposed e association, as we should be told occasion when we came with a peti- by them that we had admitted their petitioners to be indefensible. The cluded by *Great Western Railway on of Traders, Freighters, &c.* (2 Rickards, 18), where a mining were allowed a *locus standi* on the t they represented a particular the *locus standi* of the Chamber of was disallowed.

(reply): That case seems to de- int, and I therefore concede the

EMAN: The *locus standi* of all the will be *Allowed* against clause 29, of the preamble as relates thereto. the Bill, *Roberts*.

or the Petitioners, *Sharpe, Parker, Sharpe*.

LONDON AND NORTH-WESTERN RAIL- WAY (NEW RAILWAYS) BILL.

Petition of THE ST. HELEN'S AND DISTRICT COAL PROPRIETORS' ASSOCIATION.

12th April, 1883.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE-PALMER, M.P.; Mr. PARKER, M.P.; and Sir F. S. REILLY.)

Railway Amalgamation—Traders, seeking revision of Railway Rates on Amalgamation Bill—Amalgamation Bills, Principle of Traders' Locus Standi Against—Differential Railway Rates, Complaint of, by Traders—Undue Preferences in Railway Coal Rates, Alleged—Joint Committee on Railway Amalgamation, 1872, Recommendations of—Committee on Railway Rates and Fares, 1882—Traders on Line proposed to be merged by Amalgamation; and on other parts of the System.

In 1864, the St. Helen's railway was amalgamated with the London and North-Western, the latter company agreeing with the St. Helen's colliery proprietors to convey their coal for shipment to Garston at a uniform tonnage rate of 1s. 3d., including dock dues. In 1865, the same company agreed to take on lease the Lancashire Union railways for twenty-five years from the date of their completion for traffic; and, upon receiving from certain colliery proprietors in the Wigan district a guarantee of a minimum sum of £20,000 a year for rates, further agreed during this term to convey the Wigan coal to Garston at a tonnage rate of 1s. 2d., not including dock dues. A bill was now promoted by the London and North-Western company for the amalgamation of the Lancashire Union railways. The St. Helen's colliery proprietors petitioned for a revision of the rates on St. Helen's coal, on the ground that these were unduly high as compared with the rates charged for Wigan coal. The promoters contended that the petitioners had no right to ask for a revision of rates upon a bill for amalgamating railways on which their collieries were not situated, in which they had no interest as traders and freighters, and which would practically make no difference in their position, both sets of railways being already worked on these very terms by

the North-Western company under statutory arrangements :

Held, upon the principle laid down in a case cited, *South-Eastern Railway Bill* (3, Clifford & Rickards, 97), that the petitioners had no *locus standi*.

The *locus standi* of the petitioners was objected to, because (1) the bill in no way alters or prejudices their position, rights or advantages; (2) it does not deal in any way with the undertaking of the St. Helen's railway company referred to in the petition; (3) the petitioners have no such interest in the undertaking of the Lancashire Union railways company as to be entitled to be heard against the proposed vesting thereof in the London and North-Western railway company; (4) they are not parties to or guarantors under the heads of agreement referred to in the petition, and are not entitled to be heard in respect of that agreement, even assuming the same were affected by the bill, which the promoters deny; (5) the promoters deny that the bill will place them in the position of granting undue preferences as alleged in the petition, but even if that allegation were well founded, the petitioners' rights and remedies in respect thereof are not prejudiced or affected by the bill; the petitioners disclose no ground upon which, according to practice, they can be heard against the bill.

Pembroke Stephens, Q.C. (for petitioners): The petition is signed by William Pillington, Chairman, "on behalf of the St. Helen's and District Coal Proprietors' Association, in pursuance of a resolution of such association authorising such signature." The petitioners are practically traders using the St. Helen's railway, and describe themselves as "proprietors of collieries in St. Helen's and the neighbourhood, communicating by sidings direct" with the St. Helen's railway, or by sidings into the main line of the North-Western system. In 1864, the undertaking of the St. Helen's railway company, which included docks as well as railways, was transferred to the North-Western company, the transfer Act providing for a maximum rate of 1s. 3d. per ton, including dock charges upon all coal conveyed in owners' waggons to Garston from any colliery not being more than 16 miles from Garston. Our objection to the bill arises out of the proposed transfer to the North-Western company of the Lancashire Union railways, which they already lease, and which form a line from Wigan to St. Helen's, connecting the important coal-fields of Wigan, Worsley,

Pendleton and other places in the neighbourhood with the St. Helen's railway by the Lancashire Union Railways Act, 1864. The heads of agreement between that company and the North-Western company, and coal proprietors at Wigan and the neighbourhood who guaranteed to pay a sum of at least 100,000l. a-year in rates for 25 years from the opening of the Lancashire Union railway for the carriage of coal for shipmen at Runcorn, and Garston at a uniform rate of 1s. 2d. per ton. The benefit of this agreement is enjoyed by all coal proprietors in the neighbourhood of Wigan, as well as by the guarantee. The result is that the Wigan people can get coal carried to the docks for a penny less than the petitioners can.

Moon (for promoters): The 1s. 2d. rate at St. Helen's includes dock charges; the rate at the Wigan district does not.

The CHAIRMAN: Does the bill also now charge for St. Helen's coal?

Stephens: No; and if this were an amalgamation bill probably I could not object to being heard against an amalgamation bill trader to be heard, not only as to the new rates proposed by the bill, but as to any inconsistencies in the old rates. The Select Committee on railway amalgamation intended that "full opportunity should be given on every occasion presented by a bill for hearing and redressing complaint that may be made with reference to existing rates and fares; and for consideration should be taken that traders and persons interested should not be prevented by any rules of *locus standi* from appearing and arguing their case before the Committee on bills." The same idea is repeated in the report of the Select Committee on railway fares which sat last year. "When we say, 'a railway company comes before the Committee for further powers, a *locus standi* should be given to any persons coming from the neighbourhood served by that railway, who may appear to be heard in favour of a reduction of the company's statutory rates.' And they say that a *locus standi* before the Select Committee should be given to chambers of commerce and agriculture and similar bodies of traders or agriculturists." If we were heard before the Railway Commission in connection with a general arrangement of rates, we ought to be heard against an amalgamation bill.

The CHAIRMAN: Are the recommendations of the Committee to affect the rates of the Court? They have not yet taken a final decision.

Stephens: No; but by decision of the Court.

the Court has recognised the spirit of those recommendations.

Sir F. S. REILLY : The report of the Joint Committee of 1872 suggested the appointment of a joint Committee to which the recommendation as to *locus standi* would have applied.

Stephens : I apprehend that the recommendation applied, whatever tribunal the bill was committed to ; and the Court itself felt that there was so much reason in the recommendation that they have given effect to it in practice, admitting traders against amalgamation bills when they petition in sufficient numbers, and raise distinct issues.

Sir F. S. REILLY : If the report of the Joint Committee of 1872 is not an authority in your favour, it may be cited against you, because it assumes that there is an existing rule of *locus standi* which prevents traders from arguing their case before the Committee on the bill ; and it recommends that this rule should not be enforced before a tribunal which has never been created.

Stephens : The recommendation is that, if any such rule exists, it shall not apply ; it does not declare that there is a rule against petitioners. There are plenty of decisions which lay down the principle that even the transfer of existing powers and jurisdiction to a new body entitles petitioners affected by the transfer to a hearing. (*London and North-Western, Whitehaven, Cleator and Egremont Railway Companies Bill*, *Petition of Ironmasters and Traders*, 2 Clifford and Rickards, 34 ; *London and South-Western, Midland, and Somerset and Dorset Railway Bill*, 1 Clifford & Rickards, 241 ; *Midland Railway Bill*, 2 Clifford and Rickards, 123.) We ask to be heard against so much of the bill as relates to the absorption of the Lancashire Union railways.

The CHAIRMAN : Do you claim a *locus standi* against any but the toll clauses ?

Stephens : We should be limited by our petition. As long as nothing is proposed to be done affecting the statutory arrangement of 1864, we are not entitled to complain ; but a fresh statutory arrangement is now proposed affecting both the Lancashire Union and the St. Helen's railway systems, and the effect of the new statutory arrangement would be to make what might not have been unfair in 1864 decidedly unfair under the settlements of 1883.

Moon (in reply) : The facts of the case are shortly these : In 1864, the St. Helen's railway company amalgamated with the London and North-Western. As the price of that amalgamation, Parliament, at the instance of the traders, put upon the North-Western company a gross charge for coal traffic to Garston of 1s. 3d. per

ton, including dock dues. In 1865, Parliament thought that the large coal-field in the district of Wigan should have the advantage of an outlet to the ports of Widnes, Runcorn, and Garston, and as an inducement to the North-Western company to work the Lancashire Union railways, there was a statutory agreement under which certain Wigan proprietors guaranteed that the rates for coal carried by this route for shipment, should not be less than £20,000 a year, at a tonnage rate of 1s. 2d., not including dock dues. On the faith of this guarantee, the North-Western company leased the Lancashire Union railways for 25 years, and for the last eleven years they have been working under this arrangement, and will continue to carry the Wigan coal for shipment at the rates fixed, whether the Lancashire Union railway vests in the North-Western company under this bill or not.

The CHAIRMAN : Would the agreement merge upon the vesting ?

Moon : No ; it would still exist for the period specified, 14 years of which have still to run. The St. Helen's colliery proprietors would not be in any way affected under the bill, and the rates which they now wish that Parliament should revise are not the rates upon the Lancashire Union but those upon the St. Helen's line which has been vested in the North-Western for many years. These petitioners are not traders on the Lancashire Union ; they do not allege that they have ever sent a waggon load of coal upon that line, and really have nothing to do with it. It is purely an accident that the coal carried from the Wigan district passes the collieries of the St. Helen's proprietors, but if traders whose interests are not affected by the proposed amalgamation can attack the rates on any part of the same company's system, that principle would extend to the case of traders at one end of the kingdom if it were proposed to amalgamate with a line at the other end of the company's system. The committee on railway rates and fares could hardly have intended to recommend that traders should have a roving commission of this kind, whenever an amalgamation bill was brought forward. Besides, the recommendations were made by a very small majority of the Committee, and have no binding effect until adopted by Parliament. A case distinctly in my favour is the *South-Eastern Railway Bill* (3 Clifford & Rickards, 97). The cases cited may be distinguished from this.

The CHAIRMAN : We think we must *Disallow* the *locus standi* of the Petitioners in this case, on the principle upon which the Court seems to have decided the *South-Eastern Railway* case.

Agent for Bill, *Roberts*.

Agents for Petitioners, *Sharpe, Parkers, Pritchard & Sharpe*.

LONDON AND SOUTH-WESTERN RAILWAY (VARIOUS POWERS) BILL.

Petitions of (1) GREAT WESTERN RAILWAY COMPANY; (2) DIDCOT, NEWBURY AND SOUTHAMPTON JUNCTION RAILWAY COMPANY; (3) SWINDON, MARLBOROUGH AND ANDOVER RAILWAY COMPANY; (4) SOUTHAMPTON HARBOUR BOARD; (5) CORPORATION OF SOUTHAMPTON, AND MERCHANTS, SHIPOWERS, TRADERS, FREIGHTERS, AND INHABITANTS OF SOUTHAMPTON.

30th March, and 2nd April, 1883.—(*Before Mr. HINDE-PALMER, M.P., Chairman; Mr. PARKER, M.P.; Sir F. S. REILLY; and Mr. BONHAM-CARTER.*)

Railway Amalgamation—Absorption of small Railways, by Purchase or Agreement—Competing Railway Companies—Gathering ground for Traffic—Diversion of Traffic, apprehended by Harbour Board—Harbour Dues, diminished Revenue from, through Railway Monopoly—Municipal Corporation, interested in Harbour Dues, heard as well as Harbour Board, against apprehended reduction of Revenue from Harbour Dues—Traders complaining of Railway Amalgamation, how far affected by Railway proposals—Representation—Steamboat Powers of Railway Companies—Railway Amalgamation Bills, locus standi of Petitioners against.

Railway, purchase of, by second Company, without Statutory Powers—Nominal Price of Transfer, insisted on by Inland Revenue—Existing railways Connected only by Line authorised but not made—Amalgamation, competing Railways opposing—Competition between Railways, increased by Amalgamation—"Working over," and "Working," distinction between.

The South-Western railway company, in an omnibus bill, sought for permissive powers which (*inter alia*) would allow them to work, or to buy, alone or jointly with the Brighton company, the five railways existing in the Isle of Wight. The grant of these powers was opposed by (1 and 2) the Great Western and the Didcot, Newbury and Southampton railway companies, the

latter of which possessed an authorised line to Southampton, while the former had entered into a statutory agreement to work this line; (3) the Swindon, Marlborough and Andover railway company, who had an authorised line to Stone Point, and were now promoting a bill authorising them to construct a pier there, and run steamers to the Isle of Wight; (4) the Southampton harbour board; and (5) the corporation of Southampton, and merchants, traders, and others of that town. All these petitioners objected to the monopoly which the bill would confer upon the South-Western and Brighton companies, or either of them, in the Isle of Wight traffic, and to the power they would thus possess of diverting such traffic from Southampton, (or, as to petitioners (3), from Stone Point), in favour of some other route served only by the South-Western or Brighton systems. The promoters objected (*inter alia*) that, as they were not seeking for powers to run steamers from Southampton to the Isle of Wight, and as the steamers now running between these places were in independent hands, the petitioners had no right to be heard against arrangements which would only affect the Isle of Wight railways:

Held, that all the petitioning railway companies had a right to be heard in respect of a possible diversion of traffic from their respective systems; that the Southampton harbour board were also entitled to be heard on the ground that their revenue from harbour dues might be diminished by such diversion; that the corporation of Southampton, who were interested in a portion of the dues, were not represented by the harbour board, and had a separate *locus standi*; but that the traders signing the petition of the corporation had no *locus standi*.

The Great Western railway company also petitioned on the ground of the proposed amalgamation between the South-Western and (1) the Salisbury and Dorset junction and (2) the Bodmin and Wadebridge railways; and (3) of the powers sought to agree with the Swindon, Marlborough and Andover company for the

of their line. The petitioners at these proposals in the bill ble the South-Western to com-traffic now enjoyed by them exclusively. It appeared that petitioners' system nor that of the had any actual connection with n and Wadebridge line, but the eastern had obtained statutory form a junction with it, while Western had agreed to work an line, the North Cornwall, which n into it. The South-Western also held all the shares in the and Wadebridge line, though tatutory authority. The same n 1882 had obtained powers to er," &c., the Swindon line; and the bill would now enable them, ent, to "work" the line:

Great Western company were o a *locus standi*, limited by the s in their petition, against the he bill dealing with the Bodmin abridge and Swindon railways; dertaking was given by counsel ehalf not to oppose the amalga-th the Salisbury and Dorset line, ple of this amalgamation having en sanctioned by Parliament.

ndi of (1) the Great Western rail- was objected to, because (1) no ion would result from the bill, if xording to practice, entitles the be heard; (2) the bill contains no taking or using any part of their , &c., or for running engines, &c., stem; (3) the powers sought by with reference to the construc- vation railways authorised by the ll Railway Act, 1882, will not in r the status of the petitioners; no such interest in the under- Bodmin and Wadebridge railway that of the Salisbury and Dorset ray as entitles them to be heard roposed amalgamation of those with that of the company; (5) the ompetition and diversion of traffic the amalgamation of the Bodmin lge railway, even if it were well o remote to entitle the petitioners

to be heard; (6) the allegations of the petition- ers with reference to the amalgamation of the Salisbury and Dorset junction railway are too vague and general to entitle them to be heard, nor will their interests be affected by that amalgamation; (7) they are not entitled to be heard against the provisions of the bill em- powering the promoters to apply their funds for, and to take and hold, debenture stock of the North Cornwall company; (8) the power to enter into agreements with the Swindon, Marlborough and Andover railway company is purely permissive and does not in any way affect the petitioners. The apprehended com- petition and diversion from the petitioners' railway of traffic by reason of the granting of these powers, even if well-founded, does not entitle the petitioners to be heard; (9) the powers proposed to be conferred upon the com- pany with reference to the Isle of Wight rail- ways cannot possibly affect the petitioners, nor would the alleged monopoly of the Isle of Wight traffic, even if it arose (which the promoters deny), entitle the petitioners to be heard; (10) the bill contains no provision affecting the petitioners, who are not entitled to be heard for the purpose of obtaining the insertion in the bill of any of the provisions suggested by them; (11) the petition does not allege or show any interest in the objects and provisions of the bill entitling the petitioners to be heard.

The *locus standi* of (2) the Didcot, Newbury and Southampton railway company was objected to for reasons (1), (2), (10) and (11) above given, and also because (3) the apprehended diversion from the petitioners' railways, when con- structed, of traffic coming to and from the Isle of Wight railways does not entitle the petitioners to be heard; (4) the monopoly which it is alleged would result from the sale or lease of the Isle of Wight railways as proposed by the bill would not (even if it should arise, which the promoters do not admit) entitle the petitioners, according to practice, to be heard against the bill.

The *locus standi* of (3) the Swindon, Marl- borough and Andover railway company was ob- jected to, for reasons (1), (2) and (10) as in objec- tions to petition (1); for reasons (3) and (4) as in objections to petition (2); and also because (6) the petition does not allege or show that the petitioners have any such interest in the Isle of Wight railways or the traffic coming from or destined for those railways as entitles them to be heard.

The *locus standi* of (4) the Southampton harbour board was objected to, because (1) the petitioners are not the municipal or other autho- rity having the local management of, nor are

they inhabitants of, any town or district injuriously affected by the bill; (2) no land, house or property of theirs will be taken under the bill; (3) the promoters admit the right of the petitioners to be heard against the bill, so far as it sanctions the crossing by the proposed Fareham and Netley railway of the Hamble river, but deny their right to be heard against any other part of the bill; (4) the apprehended diversion of traffic from Southampton and from the works of the petitioners, and consequent diminution of their revenue by reason of the powers sought by the promoters with reference to the Isle of Wight railways is too remote to entitle the petitioners to be heard; moreover, they have no such interest in the traffic as would entitle them to be heard even if their apprehension were well founded, which the promoters deny; (5) the alleged creation of monopoly in the hands of the promoters by reason of the exercise of the aforesaid powers of the bill does not (even if it would arise, which the promoters deny) entitle the petitioners to be heard; (6) they show no interest (except as before admitted) entitling them to be heard.

The *locus standi* of (5) the corporation of Southampton and of merchants, &c., was objected to, because (1) no land, house, property, right or interest of the petitioners is proposed to be taken or affected; (2) although the petition alleges that the corporation are the municipal authority, having the local management of the town of Southampton, and that the interests of the town and the inhabitants will be injuriously affected by the bill, yet no injury is disclosed entitling the petitioners to be heard; the only ground of objection alleged on behalf of the corporation is that if the powers of the bill with respect to the Swindon, Marlborough and Andover, and the Isle of Wight railways should be exercised, traffic in respect of which tolls, rates or duties are now payable to the Southampton harbour and pier board may be diverted from Southampton, and the income of the board (one-fifth of which income the petitioners claim to be payable to them) thereby reduced. Even if the facts were as alleged (which the promoters do not admit), they would not entitle the Southampton harbour and pier board, and *a fortiori* do not entitle the corporation to be heard; (4) the petitioners signing as merchants, shipowners, traders and freighters, do not represent the trade of the town of Southampton collectively, or any particular trade of the said town; even if they did represent such trade, the injury apprehended is altogether too remote and too vague to entitle them to be heard; (5) the petition is not signed by a sufficiently large proportion of the inhabit-

ants of Southampton to entitle the petitioners to be heard as representing the inhabitants generally, nor was it adopted at any public meeting of the inhabitants; (6 and 7) the bill contains no provision affecting the petitioners or the town of Southampton, and no interest is shown entitling the petitioners to a hearing.

Pope, Q.C. (for Great Western railway company): In common with the other petitioners we claim to be heard against the powers taken by the South-Western company in the bill to absorb the Isle of Wight railways. Clause 45 would enable the South-Western, the Swindon, and the Brighton companies, or any one of them, to work these railways, which comes to the same thing as an amalgamation and control over the whole traffic; and clause 46 goes beyond this power, for it enables the same companies to buy or lease the Isle of Wight railways. At present the traffic of these railways is divided among the various companies whose systems converge at Southampton or Portsmouth; being neutral and independent, the Isle of Wight companies distribute their traffic as they please. This state of things will cease under the powers of the bill; the companies on the mainland not parties to the proposed arrangement will cease to be fed with the traffic now enjoyed by them; and it is a cardinal rule of this Court to allow a hearing to companies who may be exposed to such a combination. Our interest in the Isle of Wight traffic arises as workers of the Didcot, Newbury and Southampton line under an agreement scheduled to the Act of last session. This line is now in course of construction, and the Great Western are therefore at Southampton, with a clear interest in traffic passing to the Isle of Wight by that route. We have other special grounds of opposition to the bill. First, the Salisbury and Dorset Junction railway, now belonging to an independent company, but worked by the South-Western, will be practically amalgamated with the South-Western under the bill. No doubt it is a line which goes out of the South-Western system at one end and into it at the other. The promoters, therefore, will say that the line is already practically a part of the South-Western system; that the ordinary agreements of competing companies against the absorption of independent companies do not apply here, the amalgamating company already having a control of the traffic; and that the amalgamation will only be a matter of internal arrangement, not one involving increased competitive power. But the Salisbury and Dorset, as an independent company, is at present interested in the traffic brought to it by the Great Western, being entitled to 55 per cent. of the gross traffic.

ses to be an independent company it longer hold out any inducements or for traffic from us; and thus our as a company competing with the Western at that point may be altered ably for the worse. Our next ground ction is to the powers sought as the Bodmin and Wadebridge railway. ar the Great Western company obtained o make a little extension from Bodmin-Bodmin, connecting the town of Bodmin air system, and a little spur which ngside the line from Bodmin to Wade- with a view to its future connection t line. At present the South-Western r are the proprietors of the Bodmin and idge line in this sense—that they own s, though not under statutory powers. y are no nearer than Okehampton or thy, and the object of the bill is to them, notwithstanding this gap, to he Bodmin and Wadebridge. The North l was authorised last year as an inde- line, but virtually the control over it ired by the South-Western, and from its it is probable that, if ever constructed, e by South-Western capital. It is plain object of the bill is to bring the narrow om London to Bodmin, that is, to allow h-Western competition to Padstow and against the Great Western, who now e whole of that traffic, whatever it may is no answer to us to say, "This is an ation of the Bodmin and Wadebridge l we cannot at present make any use of e are still entitled to be heard for two —first, because if the promoters cannot y use of the Bodmin and Wadebridge, t of their bill is premature; secondly, if any scheme is now authorised which able them hereafter to make use en it is a clear case of competition, ing them to Bodmin to compete for the hich at present is ours. By means of lation of last year, the Great Western from Bodmin to Exeter. If the South- obtain possession of the Bodmin and idge line, then, partly by virtue of the given last year, partly by further powers ey might seek or by agreement with rth Cornwall, if it is ever made, ould come down to Bodmin and he traffic with us. This gives the Western a new interest at Bodmin ay make it better worth their while to t the North Cornwall. Our last ground tion to the bill is the power to make nts with the Swindon, Marlborough dover railway company, whose line

connects the South-Western with the great systems on the north. Last year the Great Western for the first time obtained access to Southampton by means of the Didcot, Newbury and Southampton line. On the other hand, the South-Western obtained statutory powers to make agreements with the Swindon company for the interchange, collection and transmission of traffic north, and to use and work over the Swindon line. Here, then, were opened up two competitive routes from Southampton to the north. We were heard last year against the bill giving the South-Western these powers over the Swindon line, though it is right to say that we had then the additional objection that the Swindon company ought not to bring the South-Western on their backs into our Swindon station. Now, by clause 45, the powers given by section 68 in last year's South-Western Act are extended. Before the Swindon line could become a really effective part of the South-Western system, it was clearly necessary for the South-Western to obtain powers to work that line. But the powers obtained by them last year were carefully guarded and only enabled them to agree for the user and "working over." They now take power to agree with the Swindon company for the working, use, management and maintenance of the Swindon railway. We have a still stronger claim to be heard against such powers than we had last year.

Pembroke Stephens, Q.C. (for the Didcot, Newbury and Southampton railway company): Our opposition is confined to the monopoly which the South-Western may acquire under the bill in the Isle of Wight traffic. The Court have been told of the competition which will arise for traffic passing to and from Southampton and the north. But we are also interested in the traffic to and from London by a fork leading from the Didcot line in the direction of Reading. We thus give a second independent route to London, besides necessarily forming an avenue for Great Western traffic north and south to Southampton and the Isle of Wight. The Didcot line was authorized expressly on the ground that it introduced into Southampton a new competitor for traffic upon equal terms with the South-Western. The object of the arrangement contemplated by the bill is to get a year's start of the Didcot line by placing in the hands of the South-Western company the five different railways in the Isle of Wight. Those railways are now perfectly independent; their only interests lie in sending their traffic by the best route; but the effect of amalgamation would be to divert the whole traffic to the line of the amalgamating company. Following the recom-

recommendations of the Joint Committee on Amalgamations, a great latitude is always allowed to companies and traders interested in the traffic affected by the amalgamation; and the one object of our extension southwards was to obtain a fair share of the traffic from and through Southampton. The South-Western already have steamboat powers which would enable them to carry into complete effect the arrangement contemplated by clauses 45 and 46. It cannot, therefore, be said that our appearance here is premature, for the moment that these powers sought for by the bill are sanctioned, the South-Western monopoly will be complete, and we shall find ourselves debarred from the share of Isle of Wight traffic we had expected.

Batten (for Swindon, Marlborough and Andover railway company): We are now running trains into Southampton, and have obtained powers to extend our line to Stone Point. Thus, besides the South-Western and Brighton companies, who are at Southampton and Portsmouth, there are three other companies, the Swindon, the Didcot, and the Great Western, interested in Isle of Wight traffic. If the five independent railways in the Isle fall into the hands of the South-Western or the Brighton companies under this bill, we shall be deprived of the whole of this gathering ground for traffic which now flows to and from the Isle of Wight by our line, *via* Cheltenham, to places in the north and centre of the kingdom; and we shall have no inducement to construct a pier at Stone Point, as we are now seeking powers to do in this session. If it were proposed to hand over all the Welsh collieries to one railway company the other railway companies interested in Welsh traffic would undoubtedly be entitled to a *locus standi*. So here, if you give the control and management of the traffic to one railway company, we are equally entitled to be heard against the creation of such a monopoly. If, by a system of through fares, passengers and goods could be booked from Cheltenham or Birmingham to the Isle of Wight, they would choose that route in preference to our shorter route by which, on reaching the Isle from Stone Point, they would have to book again at Cowes. Unfortunately in this matter we are not protected by the Railway Commissioners who, through a legislative slip, cannot give a through rate, which they think fair and proper; they can only say whether the actual rate levied is fair and proper.

Saunders, Q.C. (for Southampton harbour board): We have an interest identical in principle with that of the railways. Our jurisdiction

extends over the whole of the Southampton Water, and we own the quays and piers at Southampton, levying tolls from which we derive a revenue of about £10,000 a year. Something like a fifth of these tolls is derived from traffic passing to or from the Isle of Wight. If this traffic, therefore, should be diverted from the Southampton to the Stokes Bay, Portsmouth, or some other route, as it might be under the powers sought in the bill, we should lose this large proportion of our revenue. If we are allowed to go before the Committee we shall contend that no such powers as the promoters ask for ought to be given; but if the Committee see fit to grant these powers we shall ask for protective clauses requiring the promoters to give such rates and facilities, that people wanting to send their traffic *via* Southampton shall not be prevented from doing so. As owners of steamers both from Stokes Bay and from Portsmouth to the Isle of Wight, it would clearly be the interest of the South-Western and the Brighton companies under the bill to give lower rates or facilities, so as to divert the traffic to those routes from Southampton. When, as in this case, the communication between the Isle of Wight and other parts of the United Kingdom consists partly of land and partly of water transit, Parliament often provides that there shall be a division of rates showing how much is charged in respect of each mode of transit. There is no such provision in the bill, and unless we are before the Committee there may be no one to see that such a safeguard is provided in the interests of traders and the public anxious to avail themselves of the accommodation we afford. The following cases are in point:—(*London and North-Western Railway (England and Ireland) Bill*, 1 Clifford & Richards, 93; *Scotch Railway Amalgamation case*, 1 Clifford & Stephens, 100.)

Pembroke Stephens, Q.C. (for corporation and merchants of Southampton): Clause 46 enables the Isle of Wight railway companies, or any of them, to sell or lease their undertakings to the South-Western and Brighton companies, or either of them. The corporation of Southampton have a common interest with the harbour board in this matter, for they are entitled to one-fifth of the harbour revenues, in return for the harbour rights which, upon the creation of the board, were transferred to that body. Apart from this special interest, the corporation represent the general interests of the town and we allege, as the municipal authority, that the bill will injuriously affect those interests. The combination which may occur under the bill takes two forms—railway agreements or railway purchase. In either case mischief may

result to Southampton by ensuring the control of the Isle of Wight traffic to the company or companies absorbing the island lines and enabling them to divert the traffic to the route which best serves their interests. As to the traders, they have a distinct interest, and against amalgamation bills they are commonly heard. (*London and South-Western, Midland and Somerset and Dorset Railway Bill*, 1 Clifford & Rickards, 240; *London and North-Western, and Whitehaven, Cleator and Egremont Railway Companies Bill*, 2 Clifford & Rickards, 34; *Midland Railway Bill*, *ib.* 123.)

Sir F. S. REILLY: I suppose the practice of the Court has not varied since the case of the *South-Eastern, and London, Brighton and South Coast Railway Bill* (1 Clifford & Stephens, 149) ?

Stephens: The practice has certainly not varied in the direction of restriction.

Clerk, Q.C. (in reply): The governing rule in cases of this kind is that petitioners, in order to establish a claim to a *locus standi*, must show that the bill seeks to deprive them of some existing rights, or will prevent them from exercising their rights as effectually as before; but this bill will not interfere with any existing interest of any of the petitioners. Their common ground is that the bill will sanction a monopoly in the Isle of Wight traffic which we may exercise to their injury by diverting this traffic from Southampton. Now the facts are these:—In 1879 the South-Western obtained statutory powers, in conjunction with the Brighton company, to own and run steamers between Stokes Bay, Portsmouth, and Ryde, where there is a comparatively short transit, the pier at Ryde being the joint property of the two companies. But between Southampton and the Isle of Wight, the South-Western possess no steamboats; those which ply between Southampton and Cowes belong to one or two independent steamboat companies. At Cowes the railway does not come down to the shore, as it does at Ryde, but stops at the other side of the town, at a considerable elevation, about 200 yards from the pier. Ryde is the only place in the island which has direct railway communication to the steamers. The boats running between Portsmouth and Ryde are the joint property of the South-Western and Brighton companies; those running between Stokes Bay and Ryde belong to the South-Western alone. Even if the result of what we ask by this bill were to establish in the Isle of Wight a certain monopoly in respect of traffic, that would not, under the circumstances, entitle any one of these petitioners to a hearing. As to the *London and North-Western* case, which has been cited (1

Clifford & Rickards, 93) one very important fact is wanting here, namely that the promoters were asking for powers to establish a new line of steamers between Holyhead and Greenore. We are asking for no powers to open up a new line of communication, or to drive into a new route to be furnished by us any traffic going by any other route. The *Hull and Barnsley Railway Bill*, *Petition of North-Eastern Railway Company* (3 Clifford & Rickards, 170), is a somewhat analogous case. We are not seeking to make a new line of communication between Southampton and the Isle of Wight. We are not even seeking to establish a line of steamboats. So far as Southampton is concerned, the whole means of communication with the Isle of Wight is independent of us; and the bill does not in the slightest degree interfere with existing arrangements, or prevent the companies, which now run steamers to the Isle of Wight, from continuing to run them as before.

Saunders: They may run, but they will get no passengers.

Clerk: I do not see why they should carry no passengers. If people choose to go to Ryde for the sake of avoiding a break in the service, they will continue to do so as at present; if they choose a longer sail, up the Southampton Water, they will go by Southampton and Cowes, as they do now. There will not be the slightest change in the position, whether this bill passes or not. As to the Swindon, Marlborough and Andover company, they obtained powers last year to make a line down to Stone Point, and in the present session they are promoting a bill authorising them to make a pier or jetty at Stone Point, and to provide steam and other vessels for the purpose of traffic between Stone Point and the Isle of Wight. But we must look not at their prospective but at their existing powers. It is a well-established rule of this Court, in order to make out a claim to be heard, that petitioners must show an interference with some existing right of theirs. Now, the existing powers of these petitioners stop short with their railway on the coast; they have no right to construct a pier or to run steamers; and it is not enough for them to say they are now asking Parliament for such powers. There is nothing in the bill which interferes with any existing rights of theirs, for they cannot as yet establish any communication with the Isle of Wight. As to the persons who sign the corporation petition I ask you to look at the description some of them give of themselves—"family grocer," "furnishing warehouseman," "brewer and spirit merchant," grocers, drapers, china merchants, tailor, hatter and outfitter, confectioner, "keeper of a luncheon bar," "pork butcher,"

chemists, wine merchant and booksellers. Such persons cannot represent the traders; but if they did, they show no interests entitling them to a hearing. The only possible ground on which the corporation can claim to be heard is their share in the harbour revenue; but on this point they are adequately represented by the harbour board.

Besides the general objection raised by other petitioners, the Great Western company oppose the bill on three other grounds. As regards the proposed amalgamation with the Salisbury and Dorset railway company, that point is concluded by a statutory power of amalgamation given to the South-Western company in 1867. The terms then provided for were not altogether convenient to the two companies, and they have not therefore been carried out. But they exist, and this bill only alters the terms of amalgamation contained in the Act of 1867.

Pope: I was not aware of the existence of those terms and withdraw any claim to a *locus standi* on that ground.

Clerk: The second ground of objection raised by the Great Western petition is to our proposed amalgamation of the Bodmin and Wadebridge railway. This line is at present unconnected with any other railway; the shares in it are held entirely by the South-Western company, though without statutory authority, and it is also worked and maintained by them. Last year the Great Western company obtained powers to make a branch line from Bodmin-road to Bodmin, but these powers did not extend to the making of any junction with the Bodmin and Wadebridge, though in the Act of last year authorising the North Cornwall line it was provided that nothing in that Act should have the effect of hindering the Great Western company from making a junction with the Bodmin and Wadebridge line under the general powers in the Railways Clauses Act. It is urged in the petition that it would be inexpedient to authorise the amalgamation of the Bodmin and Wadebridge line with the South-Western, the two railways being 40 miles apart, and that such amalgamation would be opposed to the interests of the Great Western company. But while the latter company have no connection with the Bodmin and Wadebridge line, we have a line from Exeter through North Devon to Okehampton, from which place we have a branch to Holsworthy, and from a point on that branch the North Cornwall line starts in a westerly direction, making a junction with the Bodmin and Wadebridge and going on to Padstow. Under the North Cornwall Act we have the power of agreeing with the North Cornwall company to work their line when constructed

as part of our system. We have exercised that power, and shall therefore communicate with the Bodmin and Wadebridge, so that the competition which will, as the Great Western company allege, be established with them by virtue of this bill, is really, under statutory authority, established already. Thus the position of the Great Western in this district is not affected by anything contained in the bill, which is quite consistent with the legislation of 1882.

Pope: At present the Bodmin and Wadebridge is an independent company.

Clerk: No doubt, in name, though we hold the whole of the shares. It is not necessary to go into the question whether, on grounds of public policy, a railway company ought to possess itself of the shares of another company without Parliamentary powers. The question is whether the Great Western are affected by the powers we now seek. The North Cornwall Act provides that they may hereafter make a junction with that line; and if they propose such a junction, we, standing in the shoes of the North Cornwall, shall be bound to allow it to be made. The obligation attaching to the North Cornwall company under that section will apply equally to us; and no fresh competition whatever with the Great Western will arise under the Bill.

Sir F. S. REILLY: One of the terms of your amalgamation with the Bodmin and Wadebridge company is that the South-Western shall pay them £45,000. How does the necessity for that payment arise if the South-Western own all the shares?

Pope: The Inland Revenue require the insertion of a capital sum in order to charge duty. The £45,000 is mentioned for this purpose, but it would be paid from one pocket into the other.

Clerk: Yes; it is a simple matter of account and does not concern the petitioners. The next point is the power taken in the bill to make certain agreements with the Swindon, Marlborough and Andover railway company. This is a line authorised from Cheltenham by Cirencester (in competition with the Great Western by Oxford), joining the South-Western system at Andover, with running powers over the system to Redbridge, whence by an Act 1882 it goes to Stone Point. Last year, when the South-Western and the Swindon companies were in Parliament, reciprocal running powers were given to them over portions of each other's lines, as a sort of compensation for the powers obtained by the Great Western, in conjunction with the Didcot and Newbury company, bringing traffic from Manchester to Southampton. Those powers were given for the

of establishing a competition between the Great Western and the Swindon companies on the one hand, and the Great Western and the Andover companies on the other. Of course the powers were not identical with the powers asked for in clause 45 as regards the company, but they were the same in effect, only not quite so full and efficient. Now, in fact, ask to make more effectual competition sanctioned by Parliament.

CHAIRMAN (after deliberation): The *locus standi* to all the petitioners, the traders signing the petition of the Corporation of Southampton.

The *locus standi* of the Great Western Railway will be disallowed so far as regards the Weymouth and Dorset part of the bill.

I undertake that we will not seek to rely upon that part of our petition.

MR. REILLY: This bill being an omnibus measure, the question is whether it is not desirable to impose some specified limitations to the *locus standi*.

If the promoters prefer to have the *locus standi* of the petitioners limited to the effect of the bill referred to in the petitions, quite entitled to such a limitation; but if they are content that there should be no allowance except in the case of the saving the other petitioners to be heard on the allegations in their respective petitions.

Locus standi of (1) the Great Western Railway Company Allowed, on the understanding that they do not claim to be heard in respect of the Weymouth and Dorset amalgamation.

Locus standi of Petitioners (2), (3), and (4), Allowed.

Locus standi of (5) the Corporation of Southampton Allowed. *Locus standi* of the Merchants, &c., signing this petition, Disallowed.

For (1) Great Western Railway Company Allowed.

For (2) Didcot, Newbury and South-Weymouth Railway Company, and (3), Swindon, Marlborough and Andover Railway Company, Allowed.

For (4) Southampton Harbour Board, &c., Allowed.

For (5), Corporation of Southampton, Merchants, Traders, &c., *Simson, Wakeford, &c. Medcalf.*

Locus standi of (6) GEORGE BURTON.

Stopping-up of—Level Crossing over the Railway, Closing of—Amenities of Land-

owner, Interference with, by Preventing Access to Common—Right of Way—Appeal to Quarter Sessions against Stopping of, affected—Road Authority, Agreement with—Representation by, of Persons opposing Stopping-up of Road.

A railway company proposed to stop up certain roads, including a level crossing over their railway, giving access to Barnes-common. A petitioner, owning several houses near the point of crossing, complained that their amenities would thereby be interfered with, and their residential value depreciated, as, instead of the existing easy access, the substituted road would afford only a circuitous route to the common for his tenants. It was objected that the petitioner was represented by the road authority, with whom an agreement had been made by the promoters:

Held, that the injury which might arise to the petitioner's property under the bill entitled him to a *locus standi*.

The *locus standi* of George Burton was objected to, because (1) no land, &c., right or interest of his will be taken or affected under the bill; (2) the road authority is the proper party to complain of the stopping-up of Dyer's-lane; (3) there are no special circumstances connected with the petitioner's property, or the user thereof, or the access thereto which give the petitioner any exceptional right to be heard against the stopping-up of Dyer's-lane; (4 and 5) the bill contains no provision affecting the petitioner, and he shows no interest entitling him to be heard.

Rickards (for petitioner): Clause 9 of the bill authorises the company to stop up certain roads and footpaths, including so much of Dyer's-lane, Putney, as is now carried over the Richmond line on the level, and to make other roads in lieu thereof; and clause 14 vests in the promoters the soil of the roads to be so stopped up. Mr. Burton is the lessee for a long term of houses and other property adjoining Dyer's-lane, and the access by this property to Barnes-common and other places will be cutoff by the stopping-up of Dyer's-lane. The result will be a serious depreciation of the value of his property, for, in order to go from it anywhere to the north by the substituted road, a detour of more than half-a-mile would be necessary. Included in the petitioner's property are twelve

detached villas, representing a yearly rental of from £1,200 to £1,800, and a capital value of about £30,000. Easy access from these villas to Barnes-common is an advantage upon which their residential value to a large extent depends; and their present access is by Dyer's-lane and the level crossing, the latter of which, under the bill, will be closed altogether.

Clerk, Q.C. (for promoters): No; there will be an over foot-bridge.

Rickards: That is not in the bill.

Clerk: It is not necessary to insert such a provision, but that is the intention; it is part of the agreement entered into with the local authority.

Rickards: The practice of the Court is to deal with the bill as deposited. In this case we are not represented by the road authority. There is no community of interest between us; and a private owner might often be much injured by the proposals of a railway company, though the road authority might be satisfied. This is not a case in which the access to a single house is interfered with; here the petitioner's income from a number of houses is likely to be materially affected, and he may really be regarded as a person whose trade will be injured by the bill. The following cases support his claim to a *locus standi*:—(*Lancashire and Yorkshire Railway Bill*, 3 Clifford & Rickards, 70; *Ib.*, 2 Clifford & Stephens, 173, and 1 Clifford & Rickards, 235; *Bristol United Gas Bill*, 2 Clifford & Rickards, 2; *London and North-Western Railway Bill*, *Petition of S. Dewhurst & Co.*, *Ib.* 119; *Midland Railway Bill*, *Petition of Mr. Maltby*, *Ib.* 298; *Great Western Railway Bill*, *Petition of Mr. Knollys*, 1 Clifford & Rickards, 25; *Greenwich Dock and Railway Bill*, 3 Clifford & Rickards, 60; *Southport and Cheshire Lines Railway Bill*, *Ib.* 226). In the case last cited, exactly the same point was in issue; the bill proposed to cut off the petitioners from access to the foreshore from their residences. Here the petitioner's amenities will be interfered with in the same way. We are within 150 yards of Barnes-common, and if this level crossing is stopped up, we shall have to go half-a-mile further to get to the common.

Clerk (in reply): Mr. Burton's houses adjoin Dyer's-lane, but do not even front upon it; they are at right angles to it, though one house has a side entrance into the lane from the stables and coach-house. There is an existing communication with Barnes-common by Gipsy-lane and the Queen's-ride, going over our railway by a wide bridge; and in addition to the road, we propose, by agreement with the local authority, to substitute for the Dyer's-lane level crossing a foot-bridge over the railway to

the eastward, by which communication may be given with Dyer's-lane, though by a more circuitous route. As to the objection that I admit that where a manufacturer in the cartage of heavy goods to his premises by a proposed alteration of the level crossing he may be entitled to a *locus standi*, such right belongs to frontagers inconvenienced by having to go further than the stopping of a level crossing. (*Railway Bill*, *Petition of J. W. Burton & others*, 1 Clifford & Rickards, 1) Mr. Burton has a right to be heard, and the other side of Dyer's-lane have an interest. A *locus standi* has always been refused in such cases unless a special injury has been shown. (*Glasgow City Street Improvement Bill*, 1 Clifford & Rickards, 157.)

Mr. PARKER: In two of the cases cited the petitioners who were not traders were refused a *locus standi*.

Clerk: They showed a special injury. The *Southport* case was not analogous to the closing of a way, but the construction of a railway, destroying the amenities of houses.

Mr. PARKER: Those amenities are affected to a great extent, in their ready access to the sea.

The CHAIRMAN: There is one point which the promoters have not adverted to, namely, that they are taking away the petitioners' right of appeal to Quarter Sessions in respect of the closing of the level crossing.

Clerk: That is a point which might be raised in all these cases; but the rule is that where special injury arises, the road petitioners, not individuals, are the proper parties to be heard.

Rickards was heard to distinguish the cases cited for the promoters.

The CHAIRMAN: The petitioner's case is allowed against clauses 9 and 10, which authorise the company to stop up the level crossing and substitute a road.

Locus Standi Allowed as limited.

Agents for Petitioner, *Simson & Goodhart & Medcalf*.

Agent for Bill, *Rees*.

LONDON, CHATHAM AND DOVER
RAILWAY BILL.

Petition of OWNERS, LESSEES AND OCCUPIERS
(JAMES WHATMAN AND OTHERS).

1st May, 1883.—(Before Mr. HINDE-PALMER,
M.P., Chairman; Mr. PARKER, M.P., and Sir
F. S. REILLY.)

*Extension of Time Bill—Construction of railway
works, time for, extended—Landowners oppos-
ing Extension of Time Bill—Notices to treat,
effect of—Covenant by Railway Company to
complete accommodation Works within
Limited Period—Effect of Extension of Time
Bill upon Covenant by Railway Company.*

A railway company promoted a bill extending the time for completing works authorised by Acts of 1880 and 1882. The bill was opposed by landowners, lessees and occupiers, all of whom had received notices to treat, or whose land had been taken and paid for, and who complained of any further delay in the making of the line. With one of the petitioning landowners the railway company had covenanted to complete for his benefit, within a specified period, certain accommodation bridges and works. It was alleged on behalf of this petitioner, that the extension of time bill, if sanctioned, might over-ride the covenant and extend the period limited for the construction of the accommodation works. There was, however, in the bill, no express repeal of this agreement. The promoters also objected that there was still time for the performance of the covenant by them, and that in case of non-performance the petitioner would have his legal remedy for the breach. As to the other petitioners it was not shown that their case differed from that of ordinary landowners, whose land had been taken for railway purposes :
Held, that none of the petitioners were entitled to a *locus standi*.

The *locus standi* of the petitioners was objected to, because (1) they describe themselves as "owners, lessees, and occupiers of property on the line or within the limits of deviation of

the proposed Maidstone and Ashford railway," but no railway is proposed to be authorised by the bill, the Maidstone and Ashford railway being authorised in 1880, and a deviation in 1882, and the line is now in course of construction; (2) certain lands which have been or will be used in the construction of the Maidstone and Ashford railway formerly belonged to the petitioners or some of them, but all their rights therein have been purchased and paid for, or notices to treat for the same have been duly served upon them, and the petitioners have no longer any interest in such lands; (3) the petitioners therefore have no right to oppose the powers sought by clause 11 of the bill, to extend the time for the completion of the Maidstone and Ashford railway, as they will not be injured or prejudiced thereby; (4) no right, power, property or interest of the petitioners will be taken or interfered with under any of the provisions of the bill; (5) the petitioners cannot be injuriously affected by the bill in such a way as to entitle them to be heard; (6) they have shown no grounds entitling them, according to precedent and practice, to be heard against the bill.

Saunders, Q.C. (for petitioners): The bill extends the time for the completion of works on the Maidstone and Ashford line authorised in 1880. It is true that notices have been served upon many of the petitioners, and in the case of others conveyances have been executed and the land has been taken for the construction of the railway. Such a conveyance has been executed in Mr. Whatman's case, and the company have thereby covenanted that they will, within the period, by sec. 12 of the Maidstone and Ashford Railway Act, 1882, limited for the completion of the works therein referred to, construct, execute, and complete in a proper and substantial manner, and maintain in good repair for the accommodation of Mr. Whatman, four accommodation bridges and other works specified. Mr. Whatman at least should be allowed to go before the Committee to see that his rights under this covenant are not interfered with by the bill.

The CHAIRMAN: Of course the petitioner would have a remedy at law on any breach of the covenant.

Saunders: *Primâ facie* that would be so; but the question is whether if the extension of time for the construction of the works is sanctioned by Parliament, such extension will not over-ride the covenant.

Mr. PARKER: There is nothing in the bill especially over-riding the covenant?

Saunders: No; but the bill provides that "the time limited by the Maidstone and Ash-

ford Act, 1880, for completing the railway thereby authorised, is hereby extended until August 12, 1884, and the time limited by the Maidstone and Ashford Railway Act, 1882, for the railway and works thereby authorised is hereby extended until July 12, 1884." The company may contend, if that clause is passed, that the covenant must be read as if the words "as amended by the Act of 1883" were inserted in it. The bill should have a saving clause to make this point clear. This is not the ordinary case of a landowner who has received notice to treat, or conveyed his land and is therefore held to be a mere creditor. Here the land has been parted with on conditions, which may be broken by the passing of the bill. Moreover, the cases in which the Court have disallowed the *locus standi* of landowners have been in cases of extension of time for the taking of lands; this is an extension of time bill for the completion of works. I am not quite clear whether the same covenant was entered into with the other petitioners.

Pemberton (for promoters): Mr. Whatman and the other petitioners are ordinary landowners whose land has been taken, and the purchase-money paid. The accommodation works were, in effect, only part of the consideration. Moreover, the time has not yet expired within which the covenant for their completion may be effectually performed. According to the general principle which has been followed by this Court, a landlord cannot be heard against an extension of time bill, whether affecting the taking of lands or the construction of works. No new compulsory powers for taking lands are asked for by the bill. Our power of taking land compulsorily has been exercised and is exhausted. Four of the petitioners are not known to the promoters in any way. Notices to treat have been given to two others, and the company are in possession. In all the other cases the purchases are complete and conveyances have been executed. As to Mr. Whatman's fear that we shall not perform our covenant with him, he has his legal remedy if we do not.

The CHAIRMAN. We consider that the petitioners are not entitled to a *locus standi*.

Locus standi Disallowed.

Agent for Petitioners, *Hanly*.

Agents for Bill, *Martin & Leslie*.

MARYPORT AND CARLISLE RAIL (No. 2) BILL.

Petition of FREIGHTERS ON THE MARYPORT
CARLISLE RAILWAY.

18th April, 1883.—(Before Mr. PEMBERTON,
Chairman; Mr. HINDE-PALMER, M.P.;
PARKER, M.P.; and Sir F. S. BRILLY.)

Practices—Petitions of Incorporated Companies and Trading Firms—Common Seal not affixed—Signatures of Secretaries of Companies—Partners in Firms, how far sufficient—Proper Authority to Sign.

Railway Rates—Alleged Increase of, by Bill Traders and Freighters—Breach by Promoters of Pledge to Parliamentary Committee in previous Session—Maximum and actual Toll Bill in accordance with existing Agreements with Traders.

Preliminary objections were taken to petition (1 and 2), two incorporated companies' common seals, that the seals were affixed to the petition; and (3) to a trading firm, which was not an incorporated company, that the petition was only signed by two partners in the concern. It was by evidence that as to petitioners (1) the secretaries signed the petition by the authority of the chairman was ill at time of its being signed order of the directors to the secretaries in their presence; and that, in the trading firm, the signatures of the only partners in the firm held, that, under these circumstances, the petition must be sufficient.

The petitioners claimed to be traders and freighters, andatives of the trade of the district the railway system of the district on the ground that the bill disavowed the pledge given by the promoters to the Parliamentary Committee in session that they would regulate rates by a subsequent Act of rates then being charged on the railway. The petitioners contended that this undertaking must mean that rates actually

at the time of giving the pledge, to the maximum rates authorised; but their petition complained that would raise some of the maximum and this statement was not borne out by the bill itself. It also appeared that the rates contemplated by the Committee to whom the pledge had been given in the previous session, was that fixed by a previous agreement, referred to upon that point, and it was admitted that the maximum rates authorised by the bill were in excess of those fixed by the trader's agreement:

the rates which the company had taken to themselves to make permanent, to be taken to mean the maximum rates authorised upon the promoters' petition; and not the actual rates then in force when the pledge was given, and the status of the petitioners was not altered by the bill, and they were not entitled to be heard.

standi of the petitioners was objected to because (1) the Allerdale coal company, is an incorporated company with a common seal, and accordingly they can only appear according to the practice of Parliament upon a petition under their common seal; (2) it does not appear nor is it stated that George Reay, who signs the petition, is the secretary of the Allerdale coal company, or if he is the secretary of that company, that he has any authority to sign the petition on behalf of that company; (3) the Hematite iron company, limited, is an incorporated company with a common seal, and accordingly they can only be heard or appear according to the practice of Parliament upon a petition under their common seal, and therefore is not the petition of the Hematite iron company; (4) it does not appear, nor is it stated that "D. Jackson" who signs the petition, is the secretary of the Solway Hematite iron company, or, if the said "D. Jackson" is the secretary of that company, that he has any authority to sign the petition on behalf of that company; (5) the Dovenby colliery company is an unincorporated company consist-

ing of several partners trading under that style or firm. It does not appear on the face of the petition that "J. Harris and Sons," who purport to sign the petition on behalf of the Dovenby colliery company, have any authority to sign on behalf of that firm, or, if the said "J. Harris and Sons" are partners in the Dovenby colliery company, that they have signed the petition on behalf of themselves and their co-partners, and for anything that appears on the face of the petition, the other partners in the said firm may not be assenting to the bill being opposed, but on the contrary may dissent from such opposition; (6) the bill contains no provisions affecting the property, rights or interests of the petitioners or of any of them; (7) the petitioners do not show in what manner the bill injuriously affects them, and in paragraph 7 of the petition they admit it will or may benefit them; (8) the petitioners do not constitute such a proportion of the entire class of traders and freighters on the Maryport and Carlisle railway as to entitle them to be considered a representative body, nor do they in fact represent the said traders and freighters, and their own individual interests are not such as entitle them to be heard; (9) the petition does not allege or disclose any ground of objection which entitles the petitioners to be heard against the bill.

The petition was signed as follows:—

JOSEPH HARRIS. For the Allerdale Coal Company, Limited.

George Reay,
Secretary.

EDWARD WAUGH.

HENRY GRAVES. p. pro. The Solway Hematite Iron Company, Limited.

D. Jackson,
Secretary.

p. pro. The Dovenby Colliery Company, Limited.

J. Harris & Sons.

Pember, Q.C. (for promoters): I take the preliminary objection that the petition is not properly signed. Joseph Harris signs for the Allerdale coal company, and there is nothing to show who he is, nor whether George Reay is really secretary to the company and signs by their authority.

The CHAIRMAN: I think where a man has signed purporting to be a particular officer of a company, we have assumed that he was such officer.

Pember: Even assuming that we are to take for granted that George Reay is the secretary of the Allerdale company, there still remains the point whether that is a sufficient signature

for the company, or whether it is not necessary that the corporate seal should be affixed. The same objection applies to the petition of the Solway Hematite iron company, also assuming D. Jackson to be the secretary. These two companies, at any rate, are incorporated companies with a common seal. The Dovenby colliery company appears not to be an incorporated company, and therefore the same argument does not apply.

Saunders, Q.C. (for petitioners 1, 2, 3): I refer the Court to the case of the *Hundred of Hoo Railway Bill*, 1882, on the *Petition of Steamship Owners' Association* (3 Clifford & Rickards, 261). Where there has been *prima facie* evidence that authority has been given by a board for petitions to be signed by the chairman or secretary, or that it has been the common practice in signing bills or other formal documents for either the secretary or chairman of the company to sign for the company, the Court has held that petitions so signed have been properly signed. I refer the Court also to the *Monmouthshire Railway and Canal Bill* (1 Clifford & Rickards, 104), where the petitioners were firms as in the case of the Dovenby colliery company. In the *Dukenfield Local Board of Health Bill* (2 Clifford & Rickards, 9), the question arose with regard to an incorporated company with a common seal.

Pember: With regard to some of the signatories to the petitions, Henry Graves is merely the owner or lessee of a quarry, and Edward Waugh is not a trader at all.

Saunders: We will strike E. Waugh's name off the petition, and call a witness to prove that the proper authority was given by these companies to the persons signing the petition.

Mr. E. L. Waugh, called by *Saunders*: I am solicitor to the petitioners in this case. With regard to the petition of (1) the Allerdale coal company, I was authorised by the chairman, who was ill in bed and could not get to the box where the seal was kept, to get the secretary, who is Mr. Reay, to sign the petition. The petition of (2) the Solway Hematite company was signed by the secretary, Mr. D. Jackson, in the presence of the Board of Directors by their authority in my presence. The Dovenby colliery company (3) is an unincorporated company consisting only of J. Harris and Sons.

Cross-examined by *Pember*: The chairman of the Allerdale coal company is entitled to use the seal of the company under the Articles of Association. The secretary signed the petition of the Solway Hematite company because the directors present (three in number) said that

was the ordinary way in which the company signed the document.

The CHAIRMAN: We think we must hold that the petitions are properly signed.

Sir F. S. REILLY: In the peculiar circumstances, without laying down any rule.

Saunders: The petition alleges that in the Session of 1882 the Cleator and Workington Junction railway company promoted a bill in Parliament for, among other things, power to construct a railway from Workington to Brayton in competition with the railway of the promoters, the Maryport and Carlisle company. Some of the petitioners supported that bill by their evidence as the only means of remedying the injury to them and the district by the high rates charged by the Maryport and Carlisle company. The promoters opposed the bill, and gave a pledge to Parliament that they would adhere to the rates then in force upon their railway, and in consideration of that pledge the proposed railway of the Cleator and Workington company was rejected. The promoters by the present bill are professing to redeem that pledge, and in clause 2 they provide that "notwithstanding anything contained in the Maryport and Carlisle Railway Act, 1855, or any other Act of the company to the contrary, from and after the passing of this Act the maximum rate of charges to be made by the company for the use of the railways of the company for the conveyance of coals, coke, ironstone, &c., shall not exceed one penny halfpenny per ton per mile." We are mineral proprietors, landowners, merchants, and traders who are interested in the tolls charged by the company, and, although not parties to the pledge given to Parliament last year, we claim to benefit by it. With regard to that pledge, what the Committee said last year was this, "The Committee are anxious to know whether the Maryport and Carlisle will bind themselves in any way not to raise the rates above the present amount, and the Maryport and Carlisle undertook to do that." Mr. Waugh will explain how the bill evades that undertaking, and will also tell the Court that the petitioners represent not only the collieries named in the petition, but also the trade of the district.

Mr. E. L. Waugh (re-called by *Saunders*): By the bill as it stands the Maryport and Carlisle company are entitled to charge 1½d. per ton per mile for mineral traffic. I have a letter from the secretary of the company to myself dated 9th January, 1883, in which reference was made to an existing rate slightly exceeding 1d. per ton for through traffic on part of the company's system, and the bill will raise that to 1½d. per ton. [*Letter read.*] The present rate is the

paid at the time the pledge was a Committee last year. The petitioners represent a large portion of the district. They are the principal proprietors, and represent more coal trade and the larger proportion of the trade. There are only two iron districts, and the Solway Hematite is one of them, the other being the other.

mined by *Pember*: The allegation in the bill relating to raising the tolls is "The bill enables the company to increase some of the tolls by raising some of their tolls." It is true that the bill does not increase the maximum tolls now authorised by the Acts, but it will enable the company to increase the existing tolls.

The understanding before the last year was that the company would not increase the tolls above the maximum they were then making, but that the tolls then charged were to become the maximum rates.

REILLY: That would be a strange word "maximum."

(in reply): No doubt with regard to the rate of traffic on certain parts of the Maryport system there was a 1d. rate which was not one of the rates in question. This matter was fought out in 1882.

There was an agreement between the Maryport and North-Western company and the West Cumberland traders, under which the West Cumberland traders were to pay a ton for certain sorts of traffic, and the North-Western were asked by the Maryport last year whether they would agree to that agreement for the benefit of the Maryport and the London and North-Western.

The Maryport company remised to do so when they presented the bill before Parliament, and the Carlisle company also consented to do so at the same time, and they do so in the bill.

The 1d. rate referred to in the bill is not one of the rates within the Cumberland agreement, and therefore it is one of the rates within the Parliamentary bill. The pledge given by counsel, for the London and North-Western company, was "We are perfectly prepared to present the present agreement for rates as per the bill" and the counsel for the Maryport company entered into a similar undertaking on behalf of that company, and accordingly the maximum rates fixed by the bill are the same as the rates named in the West Cumberland agreement.

The CHAIRMAN: We are all of opinion that it is that particular West Cumberland agreement which it was the object of the Committee of last year to perpetuate. Is it admitted that there is no discrepancy between the tolls in the agreement and the tolls of the bill?

Saunders: We admit that.

The CHAIRMAN: Upon that assumption we must disallow the *locus standi* of the petitioners.

Locus standi of petitioners Disallowed.

Agents for Petitioners, *Dyson & Co.*

Agents for Bill, *Lewin, Gregory & Anderson.*

NEWPORT DOCK BILL.

Petition of (1) GREAT WESTERN RAILWAY COMPANY; and (2) LONDON AND NORTH-WESTERN RAILWAY COMPANY.

1st May, 1883.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE-PALMER, M.P.; Mr. PARKER, M.P.; and Sir F. S. REILLY.)

Dock Amalgamation, Railway Companies opposing—*Dock and Railway Amalgamation, distinguished*—*Railway Company, as Shareholders in Amalgamating Dock Companies*—*Diversion of Dock Traffic from Railways*—*Preference by Dock Company to one of two Competing Railways*—*Additional Provision, Petition for*—*Competition between Railways, result of Dock Amalgamation upon.*

Practice—*Agreement, alleged, to admit Locus Standi, evidence as to*—*Objections, estoppel of*—*Petition, proof of Allegations not contained in*—*Pleadings, close of, by Objections, matter arising after.*

Against a bill for the amalgamation of two dock companies now competing for traffic, petitions were presented by two railway companies, also competing for traffic from both docks. Each of the dock companies had railways in connection with their docks; and over one of these lines both the petitioning railway companies had running powers. The railway companies thus had equal rights and were able to compete for the dock traffic upon equal terms, although one of the companies was a shareholder in both docks, and worked by agreement the railways of one of the dock companies. Both petitioners now alleged, in substance, that while at present it was the interest of the dock companies to distribute their

traffic without favour between the two carrying companies, the amalgamated company might give an undue preference to either of the petitioners, *e.g.*, by excluding the other from access to the dock to which both companies were now admitted by consent. Both petitioners relied upon the analogy between dock and railway amalgamations in aid of their right to appear; the test of that right in each case being a possible diversion of traffic now competed for on equal terms by petitioning companies; and the source of that traffic, whether from docks or from railways, being immaterial :

Held, that both railway companies were entitled to be heard in order to secure for themselves equality of position in the event of the proposed amalgamation, and against such parts of the bill as might prejudice them relatively to each other in competing for the dock traffic.

Where petitioners alleged, in argument, that the promoters had undertaken to admit their *locus standi* against the bill :

Held, that evidence was admissible to prove such allegation, even though it was not contained in the petition, inasmuch as petitioners must first learn of the opposition to their *locus standi* from the service of objections, and as the objections close the pleadings in each case, petitioners have no opportunity of raising the question except during argument.

(*Per Cur.*) "The Court have to settle the question whether petitioners claiming a *locus standi* are entitled to that *locus standi*, upon whatever foundation their claims may rest. Assuming an agreement or understanding to have been come to with respect to the appearance of petitioners before the Committee, and assuming a question to arise as to the existence or interpretation of such an agreement, that would be a question for the Court to deal with."

The *locus standi* of the Great Western railway company was objected to, because (1) no part of the lands, railways, &c., of the petitioners will be taken or used under the bill; (2) the petitioners have no such interest in the river Usk as would entitle them to be heard

against clause 17; (3) clause 55 is purely permissive, and the petitioners are not entitled to be heard against it; (4) they have no interest in the docks at Newport entitling them to be heard against the provision in the bill relating to the lease, sale or transfer of the promoters' undertaking to the Alexandra (Newport and South Wales) docks and railway company (hereafter referred to as the Alexandra company); (5) no such competition will be created between the promoters and the petitioners under the bill as entitles the latter to be heard; (6) the apprehended injuries to the petitioners by reason of the exercise of the powers of the bill are purely illusory; (7) as shareholders in the respective undertakings of the promoters and of the Alexandra company, the petitioners have no interest distinct from those shareholders; they did not dissent at the shareholders' meeting, and are not therefore entitled to be heard; (8) they have no interest in the docks at Newport entitling them to be heard for the purpose of obtaining the insertion in the bill of the provisions suggested by them; (9 and 10) the bill does not contain any provision affecting them, and they do not show any interest entitling them to be heard.

The *locus standi* of the London and North Western company was objected to, because (1) no lands, railways, &c., of theirs will be taken or used under the bill; (2) the petitioners do not object in terms to the proposed powers of leasing, selling, or transferring the promoters' undertaking to the Alexandra company; but they claim, in the event of those powers being granted, to have provisions inserted in the bill in favour similar to those contained in the Alexandra company's Acts of 1865 and 1882, giving no reason why such provision should be made beyond the fact that similar provisions were made in the last-mentioned Acts. The circumstances, however, under which these provisions were inserted do not exist in the case of the promoters' undertaking, and the petitioners have no right to proceed upon those provisions as a reason for inserting similar provisions in their present bill; (3) the petitioners have no such interest in the trade and traffic of the docks at Newport as entitles them to be heard against the proposed lease, sale or transfer, for the purpose of obtaining the insertion in the bill of provisions in their favour which would be entirely exceptional, no railway company having similar rights to which the petitioners are seeking to obtain; (4) clause 55 does not in any way affect the petitioners, and the apprehended monopoly of traffic by reason of the exercise of the powers contained in that clause, even if it

high the promoters deny) does not petitioners to be heard; (5) the leny that any agreements or arrangements the petitioners and the Great lway company, will or can be internder the bill; (6 and 7) the bill convision affecting the petitioners, who erest entitling them to be heard.

Q.C. (for Great Western railway Clause 17 provides that the comy, from time to time, take or divert kor entrance by this Act authorised, air existing dock and works, water ver Usk, and from the river Ebbw, he canal formerly belonging to the hire railway and canal company, sted in the Great Western com: object to those powers, as the e to diminish the quantity of water , and interfere with the navigation.

J.C. (for promoters), conceded a s *standi* to the Great Western comt clause 17, so far as the canal was

: A more important part of the bill, object, is clauses 55, 56, and subuses giving the promoters power h the Alexandra dock and railway a lease or transfer of their undera petition for additional provision ted to Parliament, this power to sfer is proposed to be turned into amalgamate.

We are here to deal with the bill as

No doubt, but an agreement has o between the two dock companies amation; and if their petition for rovision is admitted, we shall have f petitioning against it. The proe bill, and one of the parties to the algamation, are the owners of the ks and of the lines of railway on f those docks. The other party, the ompany, are also the owners of railg to those docks. The issue in this : Are the owners of the Newport allowed to lease their undertaking andra dock company without any om the neighbouring railway com-e Great Western company own all f railway approaching Newport line leading to the Newport docks he Newport docks company. We g powers over the Alexandra docks railways, to the Alexandra docks, running powers have not been We have not running powers over t dock railways, but have always

used those lines, and it is now the interest of the Newport docks company to do everything they can to encourage our traffic. They have no engines of their own, and are willing that we should work the traffic over their railways. The principle on which railway companies are allowed to be heard against railway amalgamation, is that a change of ownership may prejudice parties between whom, and the railway to be amalgamated, there is now no antagonistic interest. In principle there is no difference between an amalgamation of docks and one of railways.

The CHAIRMAN: The cases we have had before us have been the petitions of railway companies against an amalgamation of railways. An injurious affecting would be more difficult to show in the case of a railway company petitioning against a dock amalgamation.

Saunders: I have not been able to find any direct precedent; but the result of dock amalgamation is much the same as the result of railway amalgamation. These two dock companies now compete for traffic, and therefore each has an inducement to encourage traffic to its own dock. The position would be entirely changed by amalgamation.

Sir F. S. REILLY: As you have no statutory running powers over the Newport dock lines, the amalgamated company could stop you from going over those railways?

Saunders: Yes; that is one of the dangers to which we may be exposed; or the amalgamated company might divert traffic from the Newport to the Alexandra docks, with which our communication is much less convenient. We are interested as shareholders in both docks.

Bidder: You are not here as dissentient shareholders.

Saunders: No; we claim to be heard not as dissentient shareholders, but as prejudicially affected by the proposed amalgamation. The docks may be so managed, after amalgamation, that we shall not get the traffic which, if the two companies were independent, we should be free to get. If such a state of things can occur, the analogy between railway and dock amalgamation is complete.

Bidder: The case of the *Great Western, &c., Railway Bill* (2 Clifford & Rickards, 244), for the amalgamation of the Monmouthshire railway, shows that there is no such analogy. In that case the *locus standi* of the Alexandra dock company was disallowed on the ground that there was no competition between the railway company, who were the carriers, and the dock company, who were the shippers. That is the converse of the present case.

Saunders: Of course all railway companies

are not entitled in all cases to be heard against dock amalgamations. Everything must depend upon the circumstances of the particular case. In the precedent cited, no sufficient injury was shown. That decision does not deal with the general principle. The question here is whether the Great Western can show any substantial injury likely to arise to them owing to this amalgamation.

The CHAIRMAN: It appears that from whichever of the two docks traffic comes, it must pass over the Great Western, except to some extent over the Alexandra Dock railways, as to which you have running powers?

Saunders: That is so. Both the London and North-Western, and the Great Western companies compete at both docks. Neither company have any statutory rights of access to the Newport docks over the Newport dock railways. We, however, work the traffic upon those lines, and as long as the Newport docks company are independent, it is their interest that we should do so. It would be in the power, however, of the amalgamated company so to play off one dock against the other as to foster the traffic of one railway company to the prejudice of the other. The reason we are not here as dissentient shareholders, is that the promoters of the bill, the directors of the Newport docks company, agreed that we should be heard before the Committee on the bill, and I shall ask leave to call a witness to prove this statement.

Bidder: My instructions distinctly deny any such agreement; but the petitioners do not claim to be heard as dissentient shareholders, and we have come here prepared only to deal with the case as raised upon the petition.

The CHAIRMAN: We have to settle the question whether petitioners claiming a *locus standi* are entitled to that *locus standi*, upon whatever foundation their claim may rest. Assuming an agreement or understanding to have been come to with respect to the appearance of the petitioners before the Committee, and assuming a question to arise as to the existence or interpretation of such an agreement, that would be a question for us to deal with.

Saunders: I propose to call a witness in support of our claim to a *locus standi*, on the ground that we did not become dissentient shareholders because an undertaking was given us that we should be heard upon the petition generally.

Sir F. S. REILLY: As the promoters, notwithstanding, have lodged objections to your *locus standi*, the question arises can we go behind those objections?

Pope, Q.C. (for London and North-Western railway company): Any Court would restrain a

plea which was pleaded in bad faith, though it might be an answer to the action.

Saunders: A court of law would take into account any thing which estopped the parties from raising an objection.

The CHAIRMAN: But the estoppel must be properly pleaded.

Saunders: There is no opportunity of pleading it after the petition has been lodged. We expected no objection to our appearance upon the petition. Contrary to the undertaking entered into with us, objections to our *locus standi* were lodged. Then, after the objections, there are no further pleadings, and there was no opportunity of raising the question till we came here.

The CHAIRMAN: The Court think that as there is an alleged agreement to admit the petitioners, we should hear evidence in support of it; and then if we decide that a *prima facie* case has been made out, it is understood that the promoters will have an opportunity of answering the case hereafter.

[Mr. John Lawrence, director of the Newport docks company, and Mr. Frederick George Saunders, secretary to the Great Western railway company, were then examined by Saunders to prove the alleged undertaking.]

At the close of this evidence, the CHAIRMAN said that a *prima facie* case had been made out, and an adjournment was agreed to in order that the promoters might call rebutting evidence.

Pope, Q.C. (for London and North-Western railway company): For all practical purposes this is an amalgamation of two interests which are now competitive. It is not, therefore, a case in which, according to the practice of Parliament, technical rules are to be strictly applied against companies complaining of the amalgamation. The line which joins the line of the Newport docks company, giving access to the Newport docks, was formerly the line of the Monmouthshire railway, and was worked by the Great Western. The Great Western sought to amalgamate it, and the consent of the North-Western company to that amalgamation was purchased by an agreement scheduled to the Amalgamation Act, which gave to the North-Western powers over the Monmouthshire line. Although, therefore, the Great Western company own the line to Newport, we have full powers over it, and by the consent of the Newport docks company, are in the docks there with rights equal to those of the Great Western company. When the Alexandra dock was authorised, Parliament gave us running powers over the Alexandra dock lines, as well as over the extension authorised last year. The Great Western have the like powers, so that the two companies are in

equal position at both docks. Parliament having thus taken great pains to secure equality of rights and competition upon equal terms for the two great carrying companies at Newport, I submit that either company must be heard if any arrangement is contemplated by which that equality might be disturbed. At present the Newport docks company have no other than an independent dock interest. The Alexandra company are also impartial; and if at any moment that company turn towards the Great Western we shall have the Newport docks to fall back upon. Should the two undertakings, however, become one, and the united company ally themselves with one of the two railway companies, the other has no appeal. One of the most ordinary objections to amalgamation is this:—Two companies have access to a source of traffic which amalgamation may close to one of them. In such a case Parliament always permits the company which may suffer this injury to be heard as to the conditions upon which that amalgamation shall take place. In this instance it is the interest of the North-Western company that this amalgamation should be carried out on such terms and conditions as will prevent the Great Western company from acquiring an overwhelming interest in the docks against them. For example, an agreement might be entered into between the united companies and the Great Western, under which particular traffic, for which we compete with the Great Western, might be diverted from the Alexandra docks, which we can reach by our statutory carrying powers, to the Newport docks, where we have no such powers. Such an agreement could hand over the traffic to the Great Western company; and before the Committee we shall ask that, if the amalgamation is allowed, both companies shall have the same independent right of access to the whole undertaking, which they now enjoy to a part of it. In principle the amalgamation of two docks does not differ from that of two railways. The ground upon which a railway company is allowed to interfere upon a question of railway amalgamation is that a source of traffic hitherto divisible between two companies is going to be absorbed by one; and that is exactly why we now ask to be heard.

The CHAIRMAN: At present neither the North Western nor the Great Western companies have carrying powers over the Newport dock lines. Therefore the Newport docks company, even as things now stand, could exclude the North-Western from their docks.

Pope: So a railway company which now distributes its traffic impartially can, if it likes, give this traffic to another company exclusively.

While, however, it remains independent, it is open to inducements which generally preserve an equal distribution of the traffic, and Parliament never allows it to be absorbed into another undertaking without hearing other companies who now compete with the amalgamating company for its traffic. No doubt the Newport docks company could do what has been suggested. So the Scottish central railway could have given their traffic to the Caledonian if they had been so minded; but when, in 1865, the Caledonian proposed to amalgamate the Scottish central, the North British company were heard (*Smethurst*, 126). We now have the power of bargaining with an independent company at Newport, and so long as it remains independent we are satisfied with that power; but when there is a proposal to destroy its independence we have a right to be heard so that we may not be placed at a disadvantage in competing for its traffic.

Sir F. S. REILLY: You say it is a question as to the sources of traffic, and it does not matter whether the source is a dock or a railway?

Pope: Yes. Both dock systems are now competitive. Their interest, therefore, is to maintain reciprocity with any railway which will help them in their competition. When that inducement ceases, any one railway may be preferred to another, which may be entirely deprived of traffic from that source.

Mr. PARKER: The North-Western company are not shareholders in either dock?

Pope: No.

Bidder (in reply): Railway amalgamations have no application to the present case. A *locus standi* on the ground of competition is discretionary with the Court, and when petitioning companies have been heard against railway amalgamation bills, it has been on the ground that the amalgamating company would be put in a stronger position, or that the petitioning company would be placed in a weaker position, for the purpose of competition. No result of that kind can occur here. The two companies seeking amalgamation own docks at which the traffic is shipped. The two petitioning companies own railways which carry the traffic to and from the docks. To the dock companies it does not matter where the traffic comes from, or how it comes, whether upon one line or the other; and the two companies have this certainty—that all the traffic going into the Newport docks, unless destined for the immediate locality, must be carried by one or the other of them. The position of the North-Western and the Great Western is identical in reference to both docks; and in the distribution of traffic between them the amalgamated company would have exactly the same

interests as before: it would have no reason to favour one railway more than the other. If this had been a bill authorising the Great Western company to acquire the Newport docks, the North-Western company might have had much to say against it. As it is, how can they be prejudiced?

The CHAIRMAN: Their argument is that, after the amalgamation, you may shift some of the business from the Alexandra docks, to which they have running powers, to the Newport docks where they have none.

Bidder: What possible reason have we to manipulate the traffic otherwise than with a view of getting as much business as we can?

Mr. PARKER: The Great Western company being shareholders in the joint undertaking, might there not be a reason why the united company should give them a preference?

Bidder: We may assume that the interest of the Great Western company would be to favour themselves: but as shareholders they would have no controlling voice in the management of the joint undertaking.

The CHAIRMAN: The argument was that the united company might give the Great Western running powers to the Newport docks, excluding the North-Western.

Bidder: There is no suggestion of that kind in the North-Western petition. What the petitioners object to is the authority given by clause 55 to the company and the Great Western company, subject to the provisions of the Railways Clauses Act, 1863 (Part III.), as amended or varied by the Regulation of Railways Act, 1873, from time to time to enter into agreements. That seems to be the only part of the bill which, by the most liberal construction, could be held to affect the North-Western company. There may be something in the argument that, under this clause, the Great Western company might be put in possession of the dock lines, and so be in a better position than the North-Western company. Clause 55 will be struck out, but as we must take the bill as it stands, the North-Western company may possibly be entitled to a limited *locus standi* against this clause. The rest of the bill, however, in no way alters the position of either of the two petitioning companies; and it would be a bad precedent to allow a *locus standi* against an amalgamation bill to railway companies which can show no interference with their interests. Except as to clause 55 the two companies, as regards the docks, will be in exactly the same position under the bill.

Mr. PARKER: Their complaint is that where-as they are in the same position now, they will not be in the same position hereafter.

The CHAIRMAN (after deliberation): We think that the *locus standi* of the London and North-Western company should be allowed, so far as the bill may grant any undue advantage to the Great Western company as against them.

Sir F. S. REILLY: There is no reason why the London and North-Western company should have a *locus standi* against the new works: but clause 56 is the gist of the bill, and raises the whole question of the so-called amalgamation.

Bidder: They say nothing about the works in their petition. Practically, therefore, if they are admitted against clause 56, the London and North-Western company will have a general *locus standi*, restricted to the allegations in their petition. That being so, I am bound in fairness to say that, though I argued against the Great Western in the matter of the alleged agreement to admit them, we ought not to object to their having a similar *locus standi* to that which has been allowed to the London and North-Western company. The Court has decided that the North-Western company shall be heard against everything which would or might prejudice them under the bill relatively to the Great Western company; and to secure equality of position.

The CHAIRMAN: That is the principle of our decision.

Bidder: Then it seems to follow in reason that each company should be granted a *locus standi* for the purpose of protecting its position relatively to the other. It would be better to leave the decision so than to try and pick out clauses.

Sir F. S. REILLY: We cannot draw the order in the form you suggest. You have already assented to the *locus standi* of the Great Western company against clause 17. If two companies are allowed the same *locus standi* against other parts of the bill, it would be against clauses 35, and clauses 55 to inclusive.

Rees (Parliamentary agent, for promoters): We are going to strike out all the clauses from 55 to 63, so that they will have to petition against the additional provision.

The CHAIRMAN: Suppose the Great Western company prove the alleged undertaking, will they not then have established their right to appear against the whole bill?

Bidder: They cannot possibly want more than we are now willing to concede them.

The CHAIRMAN: By the force of the agreement, if proved hereafter, the Great Western company would be let in to a general *locus standi*. They must therefore consider whether they will be satisfied with the *locus standi* given to the other petitioners. If they are not

satisfied we must then go into the question of the agreement,

Locus standi of the London and North-Western railway company *Allowed* against clause 35 and clauses 55 to 63 inclusive.

Locus standi of the Great Western railway company *Allowed* against clause 17, clause 35 and clauses 55 to 63 inclusive.

Agent for Bill, *Rees*.

Agent for Great Western Railway Company, *Wains*.

Agent for London and North-Western Railway Company, *Roberts*.

entitled to be heard as to the proposed use of the station in question by the promoters.

The *locus standi* of the petitioners was objected to, because (1) the bill does not contain any provisions for taking, using, or interfering with any lands, railway stations, or accommodations of the petitioners, or which will or can be taken under the powers of the bill or in consequence of the execution thereof; (2) with respect to the statements contained in the petition (representing that the partial user of the Victoria station at present enjoyed by the petitioners would be interfered with) the bill does not contain any provision whereby such user is or will be in any manner altered or affected; (3) the bill does not contain any provision whereby the agreement referred to in the petition is or can be in any way altered or affected; (4) the proposed access on the part of the Oxted and Groombridge railway company to the Victoria station, would not prejudice or affect the petitioners in such a way or to such an extent as according to the practice of Parliament entitles them to be heard; (5) the bill does not apply to the petitioners, nor do the powers proposed to be conferred by it interfere with any interest, right or power conferred by Parliament upon the petitioners; (6) the petitioners have no such interest in the objects and provisions of the bill as entitle them to be heard against it.

Saunders, Q.C. (for petitioners): We are joint lessees in perpetuity with the London Chatham and Dover railway company (whose *locus standi* is conceded) of the eastern portion of the Victoria station, the fee simple of which is owned by a separate company, and we are liable for half the rent of that portion. S. O. 133 contemplates a case of this kind, where railway companies are joint lessees of a station. Our rights extend to the approaches and conveniences connected with the station. Under an agreement dated 9th July, 1863, it is provided that the rent of this portion of the Victoria station should be paid by the Chatham company and ourselves in proportion to the number of trains run by us respectively, and by subsequent agreements the trains of the Great Northern and Midland railway companies have been admitted into this portion of the Victoria station, but upon the condition that the Chatham company's and our own trains should have priority over them. We ask to be heard as joint lessees of this portion of the Victoria station against those parts of the bill which authorize the company to use that station. The bill does not deal with the question of

OXTED AND GROOMBRIDGE RAILWAY BILL.

Petition of (1) GREAT WESTERN RAILWAY COMPANY.

4th April, 1883.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. PARKER, M.P.; and Sir F. S. REILLY.)

Railway Station—Power to the Promoters to use, under Bill—Petition of Railway Companies as Joint Lessees of Station—Priority of Petitioners' trains affected—S. O. 133.

It was proposed by the bill to authorise the promoters to run into and use an existing railway station, of which the petitioners were joint lessees in perpetuity with another railway company. The two companies had, subsequently to becoming joint lessees of the station, admitted the trains of other railway companies to the use of the station, but had arranged by agreement for the priority of their own trains over those of the other companies. They complained that the admission of the promoters to a share in the use of the station would cause inconvenience and obstruction of traffic, and that the bill made no provision for the priority of their own trains in the use of the station, and they claimed to be heard under S. O. 133:

Held, that the petitioners' case must be distinguished from that of a company possessing mere running powers over another company's railway, and that they were

the priority of any company's trains in the use of the station, and the petition alleges inconvenience and obstruction to our traffic using the station and its approaches. The case is not the same as if we had running powers only over a railway sought to be run over by another company, as we are here joint lessees in perpetuity of the station sought to be invaded by the promoters of the bill.

Balfour Browne (for promoters): It is a well established principle that a company having running powers over another company's railway cannot be heard to object to another company obtaining running powers over the same line. (*London and Eastbourne Railway Bill, supra*, p. 299.) This is practically an identical case. We come into the station under the wing of the Chatham company, and the Great Western company will have to pay less rent after our trains are admitted, as our trains will rank as the Chatham company's trains. S. O. 133 does not apply here.

The CHAIRMAN: Here the Great Western company are actually joint lessees of the station, and are liable to pay half the rent, and half the rates and taxes.

Browne: I will not press my objections further.

The CHAIRMAN: The *locus standi* of the petitioners is *Allowed* so far as relates to the use of Victoria station and other property comprised in their agreement.

Agent for Petitioners, *Mains*.

Petition of (2) SOUTH-EASTERN RAILWAY COMPANY.

Junctions with authorised Railway—Petitioners as Joint Owners of Railway—Lands scheduled—General Locus Standi claimed—Easement—Competition by means of Running Powers—Alleged increase of Existing Competition.

The bill sanctioned the formation of junctions with an authorised railway of which the petitioners were joint owners. The petition alleged danger, inconvenience, and obstruction to traffic from the formation of these junctions, and the petitioners' lands were scheduled. A landowner's general *locus standi* was claimed by the petitioners: *Held*, however, that they were, in accordance with previous decisions, only entitled to a limited *locus standi* on this question.

The petitioners also claimed to be heard on the

ground of competition, the promoters under the bill taking running powers over the London, Chatham and Dover company's railway into London, and so constituting competition between London and Tunbridge Wells, although the stations in London thus reached by the promoters would not be the same as those to which the petitioners had access. The promoters contended that the bill would at the most increase an existing competition with the petitioners:

Held, however, that the petitioners were entitled to be heard generally on the ground of competition.

The *locus standi* of the petitioners was objected to, because (1) the petition does not allege, nor is it the fact, that the bill contains any provision for taking or using any part of the lands, railway stations, or accommodations of the petitioners, or for running engines or carriages on or across the same; (2) the greater part of the petition has no reference to the bill; (3) the bill confers no power to interfere with the petitioners or their property, and so far as the railways will affect the petitioners, it will be the result of past legislation which will not be altered by the bill; (4) paragraphs 11 to 17 are statements of the past proceedings of the promoters and the petitioners, some of which are substantially correct, but others are erroneous, and except as regards paragraphs 15 and 17, none of them relate to the provisions of the bill; (5) with regard to paragraph 18 the petitioners do not show that they are the owners, lessees, or occupiers of the ornamental works or roads therein mentioned, nor have they any exclusive rights over or with respect to the same respectively. The roads are public roads, and the petitioners are only affected, if at all, as members of the public; (6) with regard to the remainder of the petition, the grounds of objection of the petitioners relate mainly to competition, but the petition does not show, nor is it the fact that any such competition will arise between the railways proposed by the bill and the railways of the petitioners as entitles the petitioners to be heard on that ground; (7) the proposed railways are intended to accommodate a district at present without railway accommodation, the requirements of which are in no way met by the railways of the petitioners, and the proposed railways will not deprive the petitioners of traffic which would otherwise be carried by them on their railways; (8) the bill

ease the competition, if any, exist-
the promoters and the petitioners
prejudicially affect them; (9) no
can arise under the bill entitling
us to be heard; (10) assuming
competing, it is against the practice
to allow petitioners to object to a
seeks to render competition more
(1) they base their claim to be
ain Acts of Parliament relating to
stern railway company, an under-
which the promoters have no con-
facts are stated entitling the peti-
heard according to practice; (13)
be interfered with in such a
give them a *locus standi*; (14) the
ave no interest in the subject-
bill, which according to practice
to be heard against it.

Worsley-Taylor (for petitioners): Railways
proposed by the bill commence by
a railway called the Croydon,
West Grinstead railway, authorised
now being constructed, and belong-
to the London, Brighton and
South Coast railway company jointly, and
the proposed railways (No. 3) com-
junction with railways 1 and 2,
as at Dulwich in Surrey by a junc-
tion of the London, Chatham and Dover rail-
way. We allege that the junctions with the
which we are the joint owners are
and laid out, and would be dan-
gerously interfere seriously with our traffic
claim a general landowner's *locus*
standi of the land, which they
the purpose of making these junc-
tions. A general *locus standi* was granted to
of this bill against the *London*
and Eastbourne Railway Bill (*supra*, 301), where
that the promoters' railway would
interfere with the railway of the
Groombridge company. I refer to
of Mr. Rickards (2 Clifford &
and to the *Devon and Cornwall*
Railway Bill (*Ib.*, 137).

Browne (for promoters): The pro-
posing to concede a limited *locus*
standi to the junctions proposed by
that is all the petitioners are
according to practice. In the cited
London and Eastbourne Railway Bill,
a railway crossed over that of the
by a bridge, and so took some of
the land, which extends *usque ad cælum*.
We gave an easement only for the
forming a junction, and by the
we chose to buy land up to the
to build a station there, we could

compel the companies owning the joint line to
allow us to make a junction with their line by
section 76 of the Railways Clauses Act, 1845.

The CHAIRMAN: We do not think that that
section has any bearing upon this question.

Browne: There are numerous decisions in
favour of limiting the *locus standi* of the peti-
tioners, e.g., *Waterford, &c., Railway Bill* (1 Clifford
& Rickards, 56); *East and West Yorkshire Union*
Railway Bill (3 Clifford & Rickards, 142); *South-*
Eastern Railway Bill, on the petition of the
Lambeth Vestry (*Ib.*, 213). In all cases where
junctions are made the land must be scheduled;
here it is not taken, only an easement over it
being acquired.

Worsley-Taylor: In reply to the cases cited,
it is admitted that where a railway is crossed by
a bridge in the air, which cannot interfere with
the petitioners' railway, the railway company so
interfered with are entitled to a landowner's
locus standi. *A fortiori* they ought to have a
general *locus standi* where points are inserted
in their railway, and works for that purpose are
constructed on their line, and they allege, as the
petitioners do here, that such a proceeding will
obstruct and endanger traffic. To grant a
general *locus standi* in one case and refuse it in
the other is illogical, and I ask the Court to re-
consider their decision in the case of the *East*
and West Yorkshire Union Railway Bill.

Sir F. S. REILLY: Without giving any de-
finite decision I must say that I think the
provisions regulating junctions contained in the
Railways Clauses Act, 1863, sections 9-12 in-
clusive, are against the contention for a general
locus standi here, as showing legislative recog-
nition of the limited rights of railway companies
in a case of this kind. The rights to form
junctions are there described as easements.
The same distinction seems to have been drawn
by this Court between taking an easement by
junctions, and taking permanently the property
of a railway company. The company here do
not become owners of the land upon which the
junctions rest. The promoters cannot take the
company's land under the general law, except
by agreement. In my judgment the decisions of
this Court are all reconcilable, that distinction to
which I have referred being observed.

Worsley-Taylor: The provisions in the Act of
1863 are governed by the words, "where the
special Act has authorised the company to do so
and so." Under the Railways Clauses Act, 1845,
there are many provisions for protecting a land-
owner and giving him a right to accommodation
works and so on, but those provisions have never
been allowed to modify his right to a general
locus standi where his property was interfered
with.

The CHAIRMAN: We think that on the question of junctions the petitioners are only entitled to a limited *locus standi*.

Worsley-Taylor: Then as to competition, we submit that under the powers of the bill a competition would be set up between Tunbridge Wells or Sanderstead and Victoria by the Oxted and Groombridge and the London, Chatham and Dover on the one hand, and between Tunbridge Wells and London Bridge, Cannon-street and Charing Cross by our line, on the other. We allege that each of the railways sought to be authorised by the bill commences at a distance of upwards of nine miles from the nearest point on the company's authorised railway, from which the proposed railways are consequently entirely isolated, so that this is not merely a case of improvement of existing competition. The company's communication between their authorised railway and the proposed railways can only be effected by means of running powers over the joint line conceded to the company by the Act of 1881. The proposed railways are in fact not extensions of the company's railways, but are extensions of the joint line, to which the petitioners and the Brighton company, as the owners of that line, most strongly object. The proposed railways would, if sanctioned, practically constitute a hostile extension, in the interest of a competing company, of the joint line to London by means of the running powers taken by the bill over the Chatham company's railway into the Victoria station; and the proposed railways and running powers would be used for the purpose of most unfairly diverting traffic from our system.

Balfour Browne (in reply): This line begins at Sanderstead (where it makes a junction with the joint line of the South-Eastern and Brighton companies, over which we have running powers) and it goes to Dulwich. The South-Eastern is in a sense at Sanderstead, because it is joint owner with the Brighton company of that line to Sanderstead, but it is not at Dulwich at all. Thus, by the line itself, apart from running powers, there is no competition; but the petitioners say that by reason of the proposal in the bill to take running powers over the Chatham company's railway, and so to run to Victoria and Ludgate Hill, a competition will be set up with the South-Eastern in respect of traffic between the respective stations in London and Tunbridge Wells and Sanderstead. Competition between Tunbridge Wells and London, however, was authorised as against the South-Eastern in 1881, when we got our running powers over the Brighton company's system to Tunbridge Wells, and this is only an increase of existing competition. As to

our proposal now to run over the Chatham railway to Victoria and Ludgate Hill, though both those stations are in London, they must be regarded as different places to Charing Cross and Cannon-street. What we are asking here is that, instead of continuing to run along the already over-crowded lines of the Brighton and South-Eastern companies, we should join the Chatham railway at Dulwich, and go to Victoria and Ludgate Hill by their system.

The CHAIRMAN: We think the South-Eastern are entitled to a *locus standi* upon the question of competition.

Agent for Petitioners, *Cooper*.

Petition of (3) THE VESTRY OF LAMBETH.

Construction of Railway—Local Authority—Metropolitan Board of Works—Interference with Roads, Sewers, &c.—Crossing of Roads by Bridges—Low Headway of Arches objected to—Limited locus standi as to, conceded—Demolition of House Property—Deficiency of Rates—S. O. 134.

Practice—Court will not consider Decision of Committee upon Merits.

The bill authorised the construction of a railway through the district of the petitioning local authority, who objected to (1) interference with roads and sewers; (2) crossing of roads by bridges of narrow span and low archway; (3) demolition of rateable house property, by which they anticipated a falling off in the amount of the parish rates, and claimed to have clauses inserted in the bill to make good such deficiency. They also claimed to be heard generally as the local authority under S. O. 134 (*South London Market Bill*, 3 Clifford & Rickards, 223, cited).

The promoters conceded them a limited *locus standi* as to grounds (1 and 2), but objected to the petitioners being heard further, the Metropolitan Board of Works having petitioned on similar grounds, and their *locus standi* not being objected to:

Held, that the petitioners were entitled to be heard against so much of the bill as authorised the construction of a railway within their district, the Court expressing their opinion that such a *locus standi* would cover

all consequences arising from the construction of such railway.

Counsel for the bill having referred to the decision of a Parliamentary Committee on merits as to a similar bill of the previous Session, the Court declined to be in any way bound by that decision upon a question of *locus standi*.

The *locus standi* of the petitioners was objected to, because (1) the petition does not sufficiently allege, nor is it the fact, that any land, house, or property vested in or under the jurisdiction of the vestry will be taken or interfered with under the powers of the bill or in consequence of the execution thereof; (2) the vestry was not constituted to represent the interests of the inhabitants with respect to the proposed railways, and S. O. 134 gives them no right to be heard as such, but on the contrary excludes the vestry from being heard as representing the inhabitants; (3) the Metropolitan Board of Works, and not the vestry, are the authority for the local management of the metropolis and entitled to be heard with reference to the roads, streets, drains and sewers in the parish of Lambeth affected by the bill, and that board has petitioned against the bill; (4) the bill does not contain any provision affecting the petitioners; (5) the petitioners have no such interest in the object and provisions of the bill as entitles them to be heard against it.

Rickards (for petitioners): We allege that railway No. 3 passes through a portion of the parish of Lambeth, and injuriously affects and interferes with various roads, streets, sewers and property belonging to us or under our control as the local authority of Lambeth, and we object to so much of the preamble and such of the clauses as relate to the said railway No. 3. We also object to the manner in which it is proposed by clause 17 of the bill to carry the railway across our road, both as regards the width of the span of the proposed railway bridge, and the height of the arches, which is more than that permitted by the Railways Clauses Consolidation Act, 1845. Then we have an objection with respect to compensation for loss of rates during construction.

The CHAIRMAN: As regards interference with roads and sewers and so on, is not the case governed by our decision in the case of the South-Eastern Railway (New Lines, &c.) Bill (3 Clifford & Rickards, 213) last year?

Balfour Browne (for promoters): After that was before this Court a great deal took place before the Committees of the two Houses

on the bill, and the House of Lords' Committee upon it gave every one of the rights sought here by the Lambeth Vestry to the Metropolitan Board of Works. The Metropolitan Board of Works appear in this case as they did in that, and we do not object to their being heard, but we do object to the Lambeth Vestry being also heard upon the same matters.

Rickards: The promoters cannot set up a decision of a Committee as a reason for our not being heard in the first instance to try and persuade a Committee to come to a different decision to that to which the House of Lords' Committee came last year. The bill and the petitions have been referred to the Court, and I submit the Court has nothing to do with the decision of the Committee of the House of Lords last year.

The CHAIRMAN: I think we must come to the same decision as we did last year.

Rickards: Then there is the other point as to compensation for the destruction of rateable property. The deposited plans of railway No. 3 show that the promoters take compulsory powers over a very large number of our houses, and we claim to be heard as to the deficiency of rates in respect of those houses.

The CHAIRMAN: Is not there a provision in the general law with regard to compensation in respect of deficiency of rates during construction?

Browne: In the Railways Clauses Act, 1845, there is provision made for compensation in respect of the Poor Rate and one other rate during construction.

Rickards: At the time that Act was passed, there were only those rates in existence. In the *South London Market Bill* (3 Clifford & Rickards, 223), the petitioning vestry were heard as the local authority of the district under S. O. 134, and we claim to be heard as such here. We allege, "that your petitioners represent a vastly populated Metropolitan parish, and respectfully submit that in the public interest the power to construct the railways and works proposed to be authorised by the bill within five years of the passing thereof is excessive."

The CHAIRMAN: Has a clause giving a vestry compensation in respect of loss of rateable property ever been inserted in a bill?

Rickards: I do not know of such, but in an original bill of the London, Chatham and Dover railway company, and also in the *Regent's Canal Bill* there was such a clause. We cannot be represented by the Metropolitan Board of Works in respect of the rates.

The CHAIRMAN: I cannot help thinking that a *locus standi* against so much of the bill as

authorises the construction of railway No. 3 through your district, would cover everything which followed from the construction of that railway, including any deficiency of rates.

Rickards: That would be a general *locus standi* against railway No. 3, so far as it is within our district, so we should not be limited to the question of interference with roads, &c. Will not the Court say anything about compensation in respect of deficiency of rates?

The CHAIRMAN: It is my opinion that a *locus standi* against the construction of a railway, or a particular part of a railway, must necessarily cover the question of any damage incurred by the petitioners in consequence of the construction of the railway in any way.

Locus standi of Vestry of Lambeth Disallowed, except as against so much of the bill as authorises the construction of railway No. 3, within the parish of Lambeth.

Agent for Petitioners, *H. J. Smith*.

Petition of (4) OWNERS, &c., ON LINE OF RAILWAY.

The *locus standi* of the petitioners was objected to, because (1) the petitioners are described as owners, lessees, and occupiers of property on the line or within the limits of deviation of the proposed railway, whereas there are three distinct lines of railway proposed to be authorised by the bill, and the petition is not that of owners, lessees, or occupiers of the property on the said three lines or any or either of them; (2) the petition does not sufficiently allege or show, nor is it the fact that any land, house, property, right or interest of the petitioners will or can be taken or affected under the powers of the bill or in consequence of the execution thereof; (3) the fact that the railway will or may affect injuriously the property of the petitioners, if true (which the promoters deny) does not give the petitioners any right to be heard against the bill; (4) the bill does not contain any provision affecting the petitioners; (5) the petitioners have no such interest in the objects and provisions of the bill as entitles them to be heard against it.

Balfour Browne, on behalf of the promoters, stated that, at the time the notices of objection were served, the promoters were instructed that a great number of the signatories to the petition were not owners on the line, but that it had been since found that such was the case. He proposed, however, to strike out the names of four or five petitioners, who also signed another petition, and with these and two other

exceptions he conceded the *locus standi* of persons signing the petitions.

Erskine Pollock (for the petitioners), consented to this course.

Agent for Petitioners, *Hanly*.

Agent for Bill, *Brown*.

RHONDDA AND SWANSEA BAY RAILWAY BILL.

Petition of GREAT WESTERN RAILWAY COMPANY
23rd April, 1883.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE-PALMER, M.P.; Mr. PARKER, M.P.; Sir F. S. REILLY, and Mr. BONHAM-CARTER.)

Railways—Competition, Through and Local Extension of authorised Line—Formation Junction with Petitioners' Railway—Locus as to—Interference with Access to Dock of Railway Company—Conservancy Board Diversion of Traffic.

Practice—Competing Bills—Cross Petitions against—Reference to, Allowed.

The bill authorised the completion of a railway (No 1 in the bill), which had been abandoned as to the portion now sought to be authorised by the promoters when before a Parliamentary Committee in the previous session. The petitioners claimed to be heard on ground of competition, their own railway being the only one at present authorised between the two places proposed to be connected by the extension of the promoted line of 1882. The distance between the two places by the petitioners' railway and authorised by the bill was respectively six miles and eleven miles:

Held, that the petitioners were entitled to be heard against the construction of railway No. 1 of the bill.

The petitioners further claimed a general *locus standi* on account of the proposed formation of junctions with their railway by railways Nos. 2 and 3 of the bill, for purposes of which they had been authorised with a landowner's notice; and also, on account of a provision in the bill for carrying a railway No. 1 under the river Neath by a tunnel 8 feet below the bed of the river, by means of which they contended that the im-

ment of the Neath by deepening would be rendered impossible, and the access to some important docks belonging to the petitioners injuriously affected :

1, however, that the petitioners were only entitled to a limited *locus standi* as to interference with their railway by the formation of junctions, and that they were not entitled to be heard on account of injury to the access to their docks, there being a Conservancy board appointed to control the navigation of the river Neath.

The *locus standi* of the petitioners was stated to, because (1) the promoters admit that for the purposes of forming junctions between railways Nos. 2 and 3, proposed to be authorised by the bill, and the railways or rights of the petitioners, compulsory easements and rights of the petitioners are sought, and they admit the right of the petitioners to be heard against the making of such junctions, and the granting of such compulsory easements; but they deny the right of the petitioners to be heard against any other provisions of or powers sought by the bill; (2) the petition does not allege or show, nor is it the fact, that any such competition between the petitioners and the promoters would be caused by or result from the bill if passed, or by or from the works to be authorised, as according to the practice of Parliament entitles the petitioners to be heard; the petition does not allege nor is it the fact that the bill contains provisions for taking or using any part of the railway, stations or accommodations of the petitioners, or for running lines or carriages upon or across the same, for granting other facilities affecting the petitioners; (4) the petition does not allege nor is it the fact that any land (save as regards compulsory easements as aforesaid), house, property, right, or interest of the petitioners will be or can be taken or affected under the provisions of the bill or in consequence of the execution thereof; (5) the object of the proposed railway, No. 1, is to extend the authorised railway of the promoters to Swansea. The petitioners allege in paragraph 5 of their petition that their system of railways extends to the metropolis, via (amongst other places) Swansea to Milford Haven. The promoters deny the truth of such allegation; (6) as regards paragraph 8 of the petition, the promoters deny that any new diversion of traffic from Porthcawl will arise by reason of the construction of the proposed railway No. 1,

such diversion being in effect already sanctioned by Parliament by the passing of the petitioners' Act of incorporation in the session of 1882. Even if any such diversion of traffic should arise by reason of the construction of the proposed railway No. 1, the promoters submit that such diversion of traffic would not be competition within the meaning of S. O. 130, and that if it were, such competition would be too remote and insignificant to entitle the petitioners to be heard in respect of it against the bill; (7) as regards the alleged diversion of traffic from the petitioners' dock at Briton Ferry, the promoters deny the right of the petitioners to be heard against the bill upon similar grounds to those set forth in the last preceding paragraph of these objections with respect to the alleged diversion of traffic from Porthcawl; (8) as regards paragraph 11 to 15 (both inclusive) of the petition, the promoters deny that any interference with or injury to the river Neath will be caused by the works proposed by the bill, and further that the petitioners are not the proper parties to complain of such interference or injury, even if it would be so caused or were so sanctioned; (9) as regards paragraphs 22 and 23 of the petition, the promoters deny the right of the petitioners to be heard against the bill by reason of the proposed authorisation of railways Nos. 9 and 10 included in the Great Western railway bill now before Parliament, or that any such competition, as alleged in the petition, would arise between railway No. 1 proposed to be authorised by the petitioners' bill and the said railways Nos. 9 and 10, as, according to the practice of Parliament, entitles the petitioners to be heard; (10) the bill does not (save as above expressly admitted) contain any provision affecting the petitioners; (11) the petition does not allege or show that the petitioners have any such interest in the objects and provisions of the bill (save as above expressly admitted) as entitles them to be heard against it.

Michael, Q.C. (for petitioners): In the last Session of Parliament a bill was introduced for the purpose of constructing a line from the Rhondda Valley to Swansea. It commenced at Blaen-rhondda and ran down to Briton Ferry, where it was proposed to cross the river Neath by a bridge, and then proceeded to Swansea. As the bill left the Committee the line stopped at Baglan, on the east of the river Neath, the portion between Briton Ferry and Swansea having been struck out. By the present bill it is proposed to construct a line from Briton Ferry to Swansea, carrying the line across the river Neath by a tunnel instead of by a bridge.

With regard to line No. 1 we ask for a general *locus* on the ground of competition. We allege in our petition that the proposed railway will create a general competition with the Great Western Company for traffic coming from the Welsh valleys southwards to Briton Ferry, Swansea, Milford Haven, and other places, but we shall be content to accept a *locus standi* on the ground of competition between Briton Ferry, where we have a dock, and Swansea. Last session we brought in a bill which received the sanction of Parliament for a line from Rhondda to Swansea, and in this session we have brought in a bill for perfecting that line. Against that bill the promoters have petitioned, and I ask to be allowed to refer to their petition.

The CHAIRMAN: We decided in the case of the *Bristol and London and South-Western, &c., Railway Bill* (*supra*, 261) the other day, that if it was necessary for the petitioners in order to support their case, to refer to a petition that had been presented by the promoters against the petitioners' competing line, it was competent for them to do so.

Michael: We say these are competitive bills, and I refer to their petition as evidence of competition. In sec. 7 of their petition against our bill they say that the lines against which they petition will compete injuriously with their line. Their extension from Briton Ferry to Swansea runs parallel with our line from Briton Ferry to Swansea in direct competition with it, and it must, if constructed, take traffic which otherwise would have had no means of getting to Swansea except over our line. Suppose this line were not constructed and the promoters brought traffic by their authorised line from the Rhondda Valley to Baglan, where they now stop, there would not be any means of getting traffic to Briton Ferry dock or to Swansea, except over the Great Western. With regard to lines Nos. 1 and 2, the promoters form junctions with us by means of those lines, but only concede us a limited *locus standi* with regard to those junctions. The same point arose upon the same bill in the session of 1882 (*Rhondda, &c., Railway Bill*, 1882, 3 Clifford & Rickards, 201), and the principle then established was this,—that where lands were proposed to be taken by a railway company for the purpose of their undertaking, whether those lands belonged to a private proprietor or a railway company, the landowner or the railway company were entitled to a general *locus standi*. In another case, the *Devon and Cornwall Bill* (3 Clifford & Rickards, 136), the same point was taken as here, viz., that though the land was scheduled, what was taken was merely an easement, and the petitioning company were

allowed an unlimited *locus standi*. It is true that in both these cases it was proposed to cross over the railway by a bridge, which is not done here, but we are nevertheless entitled to a general *locus standi* on account of interference with our land.

Mr. PARKER: How do they propose to interfere with your land?

Michael: They propose to take certain lands for the purpose of making junctions, and they schedule that land, describing us as the owners of it. The book of reference contains among other property of ours the following, which will serve as an example:—"Railway No. 2, Baglan, 21, ballast tip and tramway." As to this they say, "We beg to inform you that it is intended that the Act shall provide to the effect that, notwithstanding section 92 of the Lands Clause Consolidation Act, 1845, you may be required to sell and convey a part only of your property numbered 21 on the deposited plan." That clearly points to an actually taking of land.

Sir F. S. REILLY: For what purposes?

Engineer for the Bill: For the purpose of forming junctions only with the Great Western railway, in the case of our proposed railways Nos. 2 and 3, but not No. 1.

The CHAIRMAN: I think where the promoters merely propose to make junctions with the line of the petitioning company, we only give a *locus standi* limited to the interference with the petitioning company's railway.

Michael: Then we allege that the tunnel by which it is proposed to carry railway No. 1 under the river Neath will cause injury to the access to our own Briton Ferry docks, and also to the docks now being made at Neath, by the Neath harbour commissioners. The tunnel is to be constructed at a depth of only 8 feet below the bottom of the river, and would prevent any improvement of the navigation by deepening, and would thus injuriously affect our own docks at Briton Ferry, as well as the Neath docks, to which we have undertaken to pay £1,600 per annum for wharves.

The CHAIRMAN: Are the Neath harbour commissioners the Conservators of the river?

Michael: Yes; but we have private interests, irrespective of the Conservancy Board.

Ledgard (for promoters): There is no appreciable competition here. This is a line from Briton Ferry to Swansea, in connection with the authorised line of last year from Treherbert, near Blaenrhondda to Briton Ferry, the object of which two lines is to carry Rhondda Valley coal from the head of the Rhondda Valley at Treherbert (our line making a junction there with the Taff Vale) to Swansea, Briton Ferry,

and Port Talbot. The great bulk of the Rhondda Valley coal cannot be put upon the Great Western. Our line is simply a local line for the conveyance of coal from the Rhondda Valley to Swansea, and could not compete with the Great Western between Briton Ferry and Swansea. We could not take any of the South Wales mineral traffic away from them. Then, with regard to Briton Ferry and Swansea traffic, there is no appreciable Great Western traffic between those places with which we could possibly compete. The object of this line is not to take traffic from Briton Ferry to Swansea, but to take Rhondda coal to Swansea. The Great Western cannot take Rhondda coal to Swansea, except by such a circuitous route, involving a distance of 33 miles as against 15 miles by our direct line, as to constitute no effective competition.

Michael: Taking the distance between Briton Ferry and Swansea, the length of the two lines is 5 miles and 11 miles respectively.

Ledgard: The petition makes no specific allegation of competition between any two points. I concede the petitioners the same *locus standi* as to interference with their property by junctions as was given in the *East and West Yorkshire Union Railway Bill* (*supra*, 271.)

Locus standi of Great Western Railway Company Disallowed, except as against railway No. 1, and so much of railways 2 and 3, as authorises the formation of junctions with the Great Western Railway.

Agent for Petitioners, *Mains*.

Agent for Bill, *Rees*.

RIBBLE NAVIGATION, PRESTON DOCK AND BOROUGH EXTENSION BILL.

Petition of (1) CORPORATION OF SOUTHPORT.

16th March, 1883.—(Before Mr. HINDE-PALMER, M.P., Chairman; Mr. PARKER, M.P.; Mr. MELDON, M.P.; Sir JOHN DUCKWORTH; Sir F. S. REILLY; and Mr. BONHAM-CARTER.)

Practice—Adjournment, application on—Alleged Facts newly disclosed—Objections, application to extend time for lodging.

Upon the adjournment of a case in which the parties were present and the pleadings complete, counsel for promoters applied for an extension of the time for lodging objections against the *locus standi* of one of the

petitioners, an important fact having only just come to the notice of the promoters, namely, that the petition was not properly sealed:

Held, that the Court must treat the case as though it were then to be heard, and that the promoters were not therefore entitled, by reason of the adjournment, to any extension of time for the purpose of amending or adding to their objections.

The CHAIRMAN announced that this case, appointed for to-day, would be adjourned to the 20th inst.

Bidder, Q.C. (for promoters), asked the Court to extend the time for giving notice of objections to the *locus standi* of the corporation of Southport, an important fact having come to the knowledge of the promoters only within the last hour, which therefore they could not include in their notice of objections. This fact was that the petition of the corporation had not been sealed.

The CHAIRMAN said the Court must treat the case as if it were for hearing that day. They did not, therefore, feel that they would be justified in extending the time for lodging objections.

Gregory (agent for the Southport corporation) produced the original petition, and stated that the seal was affixed to it.

Bidder: We deny that the red wafer attached to the petition is really the seal of the corporation.

The CHAIRMAN: The Court cannot go into that question.

20th March, 1883.—(Before Mr. HINDE-PALMER, M.P., Chairman; Mr. PARKER, M.P.; Mr. MELDON, M.P.; Sir F. S. REILLY; and Mr. BONHAM-CARTER.)

Sewer, outfall, discharge of, into estuary—Navigation, transfer of rights over, to Municipal Corporation—Sewer of neighbouring Authority injuriously affected by works for improving navigation—Stoppage of channel for sewage outlet—Training walls, effect of—Possible Silting of Channel—Foreshore, apprehended Nuisance by Deposit of Sewage on—Saving clause, Repeal of—Remoteness of Works from Sewer outfall—Urban Sanitary Authority, apprehending injury to Health of District.

The corporation of Southport in 1875 obtained statutory powers to construct an outfall

sewer discharging into Crossens channel, situated in the estuary of the Ribble. They were also, by purchase from the Duchy of Lancaster, the owners of foreshore fronting the town. This foreshore, together with the sewer at its point of discharge, was situated in North Meols, a township extending for several miles along the coast and including both the foreshore and the sewer in question throughout its course and at its point of outfall. The corporation of Preston promoted a bill which (*inter alia*), transferred to them the jurisdiction and rights of the Ribble Navigation company, and sanctioned the construction by them of new works for improving the navigation, sanctioning also the repeal of a saving clause in the company's existing Act, which prohibited the construction of works in North Meols except for the purpose of cleansing and dredging the channels. The Southport corporation complained that the new training walls and other works proposed under the bill might impede or stop altogether the flow of sewage and of upland water through Crossens channel, leading probably to extensive silting and to a deposit of sewage water on the foreshore, with a consequent nuisance in front of the town and great injury to its attractions as a health resort. As owners also of foreshore in North Meols they opposed the repeal of the saving clause. The promoters objected that their proposed works, even up to the limits of deviation, would be situated two miles from any lands in which the petitioners were interested, and that it was not enough for petitioners to complain as landowners of proposed works or the repeal of a saving clause, but that they must show a *prima facie* case of probable injury to specific lands by reason of such works or repeal, and here the interest was much too remote:

Held, that the corporation of Southport were entitled to a *locus standi*, not generally against the bill, but against the provisions sanctioning the repeal of the saving clause and against the works' clauses.

The *locus standi* of the corporation of South-

port was objected to, because (1) no lands of theirs can be taken compulsorily under the powers of the bill; (2) the petitioners have no such interest in Crossens channel, either by reason of their sewage works or the drainage of land or otherwise, as entitles them to be heard against the bill, even if the works to be done thereunder in any way prejudicially affected that channel, which the promoters deny; (3) the promoters deny that the effect of running sewage into the said channel will be to cleanse and scour the bed thereof, or to keep open the same for tidal waters; (4) the petitioners' allegations are inconsistent; (5) sec. 155 of the Ribble Navigation Act, 1853, was not passed for the protection of the petitioners or any person through whom they claim, and the repeal of that section is not a matter which concerns them, but only the landowners therein mentioned; (6) the petitioners allege no grounds entitling them to be heard.

Pembroke Stephens, Q.C. (for petitioners): The bill authorises (*inter alia*) the transfer of the undertakings of the Ribble navigation company, and the statutory powers of that company, to the town council of Preston, the improvement by them of the river Ribble and the navigation, the construction of docks and other works, and the extension of the borough. We are the urban sanitary authority of Southport and have purchased from the Duchy of Lancaster a portion of the foreshore, so that we are landowners within the township of North Meols in which the promoters propose to execute works. Under the powers of the Southport Improvement Act, 1875, we have completed at very great expense an outfall sewer into Crossens channel, situated near the mouth of the river; and it was provided (sec. 22) that this sewer, from the point where it entered the Rev. Charles Hesketh's property, to the point of its discharge into Crossens channel "shall be so constructed, maintained, and used by the corporation that no accumulation or deposit of solid sewage matter or other filth shall be allowed to lodge, remain, or stay therein." There are also arrangements with the landowners, who at that point have interests in the foreshore, with regard to the mode in which the outfall is to be kept and maintained, so as to maintain a free flow in the Crossens channel. This channel is the drainage outlet not only of the sewage of Southport, but of upwards of 33,000 acres of land in North Meols and other townships. The consequence is that at all times of the year there is a very large stream of water running down that channel; and the flow of this water and of the Southport sewage has the effect of cleansing and scouring the bed of the channel, and

ping it open for the free ebb and flow of the tidal and inland water, upon which the proper working of the sewerage system entirely depends. The sewerage system has already cost £10, and we are now applying to the Government board for authority to raise and upon it a further sum of £20,000.

bound, therefore, to watch carefully the works which may endanger the free discharge of our outfall sewer; and we are advised that the training walls, embankments, and other works proposed in clause 43, particularly the extension of the south training wall seaward into the estuary of the Ribble, will dam back the tidal waters, and thereby seriously damage the drainage works, if not render them useless. Further, we apprehend that these works will seriously diminish the power of the channel to scour itself, and that the result will be the formation of shoals and sand-banks which will interfere with the navigation, lessen, and perhaps close, Crossens channel, and deposit sewage upon the foreshore we have cleared in front of the town, thus greatly interfering with the popularity of Southport as a health resort. If, as the bill contemplates, the training walls are carried down ever further towards the sea, the character of the existing channels must obviously be altered. Another result will be this:

the training walls into an estuary of this kind, though you may thereby form a conduit for the water which is within the walls, you form an equally good gathering place for silt behind the walls, so that the estuary is deepened at the expense of the rest of the estuary. Experience has shown that this has been the effect of walls in the river Mersey, near this point; and therefore when we sanction the works set forth in clause 43, the probable effect must be considered, not only upon the water channels, but also upon the sewage matter at present in suspense, but which will be deposited behind these constructions. It is not only proposed to continue seaward the existing walls, but to raise the height of the walls; and clause 48 will authorise very great deviations of deviation. We are advised, indeed, that under the powers of the bill, a wall may be built right across Crossens pool, so as to prevent the discharge of the Southport outfall sewer. The result in any case will be the creation of a serious nuisance from the deposit of sewage matter on the shore, and we might thus be involved in serious legal difficulties. This Court cannot but take notice of the issue raised in our petition. We allege that the proposed works will injuriously affect

the town of Southport; the promoters deny that any such result will follow; and that is a question which can only be decided upon the merits after hearing the evidence of experts on either side. (*London and South-Western Spring Water Bill*, 3 Clifford & Rickards, 179.) Another point on which we claim to be heard is the proposed repeal (clause 44) of sec. 155 of the Ribble Navigation Act, 1853, passed for the protection of landowners in North Meols. We are included in that saving clause as owners of land purchased from the Duchy and from other persons.

Bidder, Q.C. (for promoters): Your lands are in Southport, which is part of the township of North Meols, but is situated miles away from our works.

Stephens: Very likely, but we are still included within the section which the bill will repeal. Moreover, we own this outfall sewer, extending for many miles through North Meols, and for the purposes of this sewer we in some cases bought land and in other cases acquired easements. By arrangement with the landowners we are also interested in the lands situated at the point of discharge into Crossens channel. The section which the bill proposes to repeal provides that the Ribble navigation company shall not construct any works within or upon the shore in the township of South Meols except for the purpose of scouring and dredging the channels.

Bidder: Our contention will be that the petitioners do not allege, nor is it the fact, that we take power to construct any works on any land in North Meols in which they are interested, though we are proposing to construct works which may affect a certain part of the shore in which other landowners in North Meols are interested. These landowners petition against the repeal of sec. 155, and their *locus standi* is admitted.

Stephens: Under the Act of 1853 it would have been impossible for the company or their successors in title to do anything which would affect the shore in North Meols. The corporation of Preston now propose to repeal that restriction, and to construct works which go extremely near to the shore at North Meols.

Sir F. S. KILLY: You say "extremely near." How near?

Bidder: Two miles off.

Stephens: The limits of deviation are much nearer the shore than the line of works shown upon the deposited plan. Even supposing that there was no question here as to the effect of existing statutes and the repeal of sections now saving our rights, and supposing that we were here merely as a local authority who had con-

structed a sewer for the drainage of our town and apprehended injury to that sewer and to the public health through the powers asked for in the bill, I submit that we should have a clear *locus standi*. When you add that the construction of this sewer has been the result of two Acts of Parliament and a Provisional Order, without any interference from the Ribble navigation authorities, the case is carried much further. It must be remembered, too, that it is not the existing body responsible for the Ribble navigation who are seeking power to execute these works and to repeal existing provisions, but a municipal corporation who are for the first time proposing to acquire rights over the navigation.

Sir F. S. REILLY: You would say that if the Ribble navigation company itself came to repeal this section you would have a right to be heard?

Stephens: Certainly, and we have *a fortiori* a right when the parties preferring this claim for transfer of jurisdiction and power to construct new works are the corporation of a town which may not have interests identical with those of Southport. It may be said by the promoters that there will be no physical interference with our works. As to this there are cases in point.

The CHAIRMAN: I do not think you need trouble yourself about cases.

Bidder (in reply): The petitioners are endeavouring to establish a technical *locus standi* upon the question of interference with sewage works; but they really want a *locus standi* in order to oppose the transfer of the Ribble navigation to the corporation of Preston. That, however, is a question with which the corporation of Southport have no more to do than the corporation of Liverpool. Their claim to be heard against the repeal of sec. 155 in the Act of 1853, by reason of their ownership of lands in North Meols, is an afterthought. In the petition there is no allegation that any lands of theirs or any interest of theirs in that township will be affected by any works of ours, or by the repeal of this section. North Meols is a very large township, embracing many miles of foreshore on the Ribble and on the sea. In the eastern portion of North Meols our works do, or may, within the limits of deviation affect parts of the foreshore; but our works do not go within miles of the part of North Meols in which the petitioners are interested, namely, at Southport, which will be about $3\frac{1}{4}$ miles from the limits of deviation. To establish a right to be heard in this case it is not enough for petitioners to say—"We are landowners in North Meols;" they must be able to say—"We

are landowners in that part of North Meols in which you are taking power to construct works, which will affect us." The petitioners do not say this, because they cannot say this. Nor is it enough for petitioners to allege that they object to the repeal of a saving clause; they must show that they are persons in some way affected by, or interested in, its repeal. Here the petitioners do not even allege that they will be hurt by the repeal.

Stephens: Southport itself is affected by the repeal.

Bidder: It is true that sec. 155 is repealed generally, and that Southport may be a part of North Meols; but the bill will authorise the construction of no works within three miles of any land in which the petitioners are interested in the township. As to the alleged interference with the sewerage of Southport, the petitioners have no interest whatever in Crossens channel, nor have they purchased the land through which the outfall sewer goes. Their Act of 1875 authorises them to carry out and complete certain sewerage works; but neither in that Act nor in any other Act are they authorised to acquire any rights upon the foreshore; nor have they any such rights; nor do they allege that they have. They have probably arranged with the landowners for easements for sewerage purposes; but as to Crossens channel and the foreshore there, they have no right whatever.

Stephens: There is a statutory obligation upon us to keep the channel open. The Act of 1875 provides, that our main outfall there "shall be," not may be, "so constructed, maintained, and used," as to secure that object.

Bidder: There is no obligation on the corporation of Southport to maintain the sewer at that point, but only a provision that if the sewer is maintained they shall not allow any accumulation of filth, &c., on Mr. Hesketh's land. The corporation may abandon their sewer to-morrow if they please.

Stephens: It was in our option to make the sewer, and having done it we are not likely to abandon it.

Bidder: I find that the nearest point at which their sewer approaches our limits of deviation, as the crow flies, is two miles. In some cases the Court has decided that a mere injurious affecting is not enough to give a *locus standi*.

Stephens: That is, those petitioners could get compensation under the Lands Clauses Act.

Bidder: The petitioners themselves say the Crossens channel is kept clear not by tidal water only but by the flow of inland water and the sewage. If that be true, the channel will be kept clear still, for we are not going to cut off the upland water or interfere with the flow

fall sewer. The training-walls we construct under the bill would be so low that they could not affect the cor-fall.

MAN: We think the corporation of are entitled to a *locus standi*, not against the bill, but against clauses 49, and 61 (the repeal and works) and so much of the preamble as relates

locus standi Allowed as limited.

For Petitioners, Lewin, Gregory &

(2) THE LONDON AND NORTH-WESTERN AND LANCASHIRE AND YORKSHIRE RAILWAY COMPANIES.

Company's Undertaking, Transfer of Municipal Corporation—Railway Companies—Loss of Ownership of Navigation by Municipality—Docks, Construction of, by Municipality—Competition between Docks and Navigation, Remoteness of—Rating, exemption of Railway Companies—Public Health Acts—Exemptions of Railway Companies from Rating—Railway Companies, as Ratepayers in Borough, Distinct interests of—Interest in, arising from Tunnel—Ease of ground of general Locus Standi.

By sanctioning (*inter alia*) the transfer of the undertaking of a navigation company to a municipal corporation, and the construction by them of new docks, two railway companies presented a joint petition claiming a *locus standi* on four grounds: (1) that they were jointly interested with the navigation company in a line of railway which was part of the undertaking to be constructed, and as such partners objected to the transfer of the partnership property; (2) that as ratepayers in the borough they had distinct interests, and were entitled to a partial exemption in respect of rates incurred under the bill, which rates were charged upon the borough; (3) that they had a landowner's *locus standi* in right of a tunnel or watercourse, constructed by the corporation to the prejudice in title of one of the petitioners, situated on land subject to the compulsory powers of the bill; (4) that competition

would arise between the new docks to be constructed under the bill and certain docks eighteen miles distant, jointly owned by the petitioners. It was objected (1) that the petitioners were not partners in the railway in question, but lessees of the land, and not entitled, on this ground, to object to its transfer; (2) that the corporation already had the right to contribute to the navigation undertaking, the petitioners enjoying no exemption from rating in respect of such contribution, and that no change in the incidence of taxation was proposed; (3) that the tunnel was an easement, not an interest in land entitling the petitioners to the general *locus standi* of a landowner; (4) that the competition was too remote, and that the construction of the proposed docks would merely make an existing competition more effective:

Held, that the petitioning railway companies were entitled to a general *locus standi* against the bill.

The *locus standi* of the London and North Western and Lancashire and Yorkshire railway companies was objected to, because (1) no lands or property of theirs can be taken or affected under the bill; (2) the proposed transfer by the Ribble navigation company of their share and interest in the Ribble branch railway to the promoters does not alter the existing rights and interests of the petitioners; (3) no competition will arise under the bill entitling them to be heard; (4) the question of the expediency of allowing a corporation to embark in commercial speculations is one of public policy as to which the petitioners are not entitled to be heard; (5) the improvement of the Ribble navigation and the construction of new docks is the improvement of a competition which already exists, and such improvement and construction do not constitute a ground for hearing the petitioners; (6) the works proposed are not such as are within the provisions of the Public Health Acts, and the petitioners are not entitled to be heard to claim such exemption from voting as is prescribed by that Act; (7) the promoters deny that the petitioners have a right to be heard generally against the bill by reason of the circumstances alleged in paragraphs 8-10 of the petition, but the promoters admit their right to be heard against clause 47 for the purpose of obtaining provisions protective of the tunnel mentioned in paragraph 8; (8) the petitioners

claim to be heard as ratepayers in Preston, but are not entitled to be heard against a bill promoted by the corporation of that borough; (9) the petitioners do not allege that their future contributions to the rates will be increased, but only that they may be increased, and apprehension of injury does not constitute a ground on which they are entitled to be heard; (10) no ground of objection is alleged by the petitioners entitling them to be heard.

Pope, Q.C. (for petitioners): The two companies petition jointly as owners of the railway at Preston, and we have four grounds of *locus standi*: (1) the proposed transfer of the navigation company's undertaking to the corporation of Preston; (2) our claim to differential rating under the bill; (3) interference with a tunnel in which the two companies are interested as owners of the Lancaster canal; and (4) competition between the docks at Fleetwood, which are the joint property of the two companies, and the proposed new docks in the river Ribble. (1) The undertaking of the navigation company extends from the bridge of the North Union railway (a line vested in the petitioners) to the sea, and the company have statutory powers to improve the river between these points, to acquire lands, quays, wharves, and other property, and to levy tolls and rates on vessels navigating the Ribble and using their quays. The undertaking also includes a share in the Ribble branch railway, which was made under an Act of 1845, at the joint expense of the North Union and the navigation companies. As joint owners of the North Union railway we are therefore partners with the navigation company in the Ribble branch railway, and as such partners we strongly object to the transfer of this line to the corporation. We contend that you cannot alter the constitution of a partnership without the consent of all the partners.

Sir F. S. REILLY: Does the North Union company still exist in law?

Pope: Yes; since 1846 we have been sole workers and users of the line under a lease for 999 years, but the North Union company still exist as a corporation for the purpose of receiving the rent, though they have no control over the management. Now the corporation of Preston seek to change either our partner or our landlord.

Bidder, Q.C. (for promoters): The only part of the Navigation company's undertaking in which the petitioners, as the North Union, are interested, is the Ribble branch railway.

Pope: Yes, but the promoters do not distinguish in the transfer between the railway and any other part of the undertaking.

Bidder: If the petitioners will be content

with a *locus standi*, limited to the transfer of the railway to the corporation, we will admit their *locus standi*.

Pope: We are not content with a *locus standi* upon that point only; we claim to be heard against the transfer generally. (2) Clause 97 authorises the corporation to borrow for the purposes of the bill upwards of £650,000; clause 107 provides that any deficiency in the harbour revenue, &c., in meeting the expenses under the bill, is to be made good out of the borough fund and borough rate; under clauses 110 and 112 the stock which the corporation may create instead of borrowing may be charged upon the whole revenues of the corporation, and on the borough fund and borough rate, and on the district fund and general district rate, and on all other funds and rates established and leviable by the corporation. We are large ratepayers in Preston and apprehend that under those and other provisions in the bill our future liabilities as ratepayers may be largely increased, while, so far from deriving any benefit from the transfer of this undertaking to the corporation and the making of the new docks and works, we shall suffer great loss and injury through competition. We say, therefore, we ought to be exempted from any contributions whatever towards expenses incurred by the corporation in connection with the transfer and the construction of docks and new works. With regard to any expenses incurred for the other objects of the bill we contend that, as our interests as ratepayers differ from those of other owners and occupiers, and as we derive but little benefit from these objects, the principle of differential rating adopted in the Public Health Act and numerous borough improvement and other local Acts, should be made applicable to new contributions to the borough rate under the bill, or that the corporation should only be authorised to raise the sums proposed on the security of the general district fund and rate to which that principle already applies. Railways are assessed under improvement rates at one-fourth of the assessable value of their line. The exemption does not include stations, nor does it apply to rating for purposes covered by the borough fund. Of late years, therefore, railway companies have continually gone before Committees for relief by charging particular expenditure in boroughs upon a particular fund, which would give the railway companies the exemption they claimed. Sometimes this claim has been made with success before Committees; as regards *locus standi*, railway companies have always been allowed to appear to urge it. This point was settled in the case of the *Leeds Corporation Bill* (2 Clifford &

, which is an authority for our *standi* against the financial part
b) We are entitled to an absolute
against the bill, as its compulsory
to certain property at Preston,
marsh, under which passes a tunnel
constructed by the Lancaster canal
the purpose of pumping water
Ribble to the canal. When this
de, the corporation as landowners
deed that the canal company,
rs, and assigns, should for ever
s, enjoy, support, and repair the
ght of entry on Preston Marsh at
pleasure. The Lancaster canal is
erty of the London and North-
ay company, and the corporation
o divert the water and to use the
is tunnel for railway sidings.
s notice of objection gives you a
or the purpose of protecting this
ot that enough?
if we are landowners who may be
e entitled to a landowner's *locus*

we traverse your ownership of
t prove that you are landowners.
true that the tunnel has not for
en used for the purpose of pump-
ich has been obtained by the canal
voir since constructed; but the
the property of the canal com-
s North-Western company. The
ation in the bill even include a
mouth of the tunnel, so that that
marsh might be filled up and covered
ses, or be dealt with in any way
ration might desire as owners of
a; and there is no provision for
ie culvert or protecting the tunnel,
omoters' engineer seems to have
We are therefore in the position
s affected under the bill, and are
general *locus standi*.

REILLY: I think you show a *prima*
ownership.

are also entitled to a general *locus*
ground of (4) competition between
Fleetwood and those now proposed
s. It is true that the Fleetwood
ghteen miles from the proposed
ut that makes no difference if the
would be a real one, and the
ws that it would be so. At
s is no trade at Preston, but these
bring trade to Preston in com-
a us at Fleetwood. Competition
is is just as admissible a ground of
as competition between railways.

(*East and West India Dock Extension Bill*, 3
Clifford & Rickards, 138; *Thames Deep Water*
Dock Railway Bill, *ib.* 232; and *Bristol Port and*
Channel Dock and Warehouses Bill, *ib.* 15.)

Sir F. S. REILLY: What would be the increased
distance in a voyage between Belfast and Preston
as compared with a voyage between Belfast and
Fleetwood?

Pope: The difference would be very slight;
probably not more than four or five miles.

Bidder (in reply): We might rest our objec-
tion as regards competition upon the ground of
its remoteness, Fleetwood being about 20 miles
from Preston as the crow flies. Moreover, another
principle comes in here, for the Court has always
held that no ground of *locus standi* exists where
the scope of a bill is simply to make more
effective an existing competition. The object of
this bill is not for the first time to create a port
at Preston; that was done in 1845 by the Ribble
Navigation Act, which expressly authorised the
Ribble navigation company to accommodate
shipping, construct quays, and take tolls on
vessels for wharfage and pilotage.

Sir F. S. REILLY: What have been the receipts
from all these tolls?

Bidder: About £1,200 a year, and the expen-
diture upon existing works has been £200,000.
There is thus an existing competition here of
port with port and wharf with wharf. I do not
say of dock with dock. The works proposed
will no doubt enable Preston to compete with
Fleetwood more effectively, but that fact does
not, according to the principle recognized by the
Court, entitle the petitioners to a hearing. As
to the transfer of the Ribble company's under-
taking to the corporation, the petitioners are
not partners in the Ribble branch railway, but
are mere assignees.

Pope: I thought this point was conceded.

Bidder: No; because you would not accept
our offer of a *locus standi* limited to the transfer
of the railway. What the petitioners want to
do is not to object to the transfer of this rail-
way, but to open up the whole question raised
in their petition as to the impolicy of allowing
municipal corporations to embark in costly and
hazardous commercial speculations.

The CHAIRMAN: The Committee would prob-
ably limit the petitioners on this point, and
would refuse to let them discuss general prin-
ciples.

Bidder: Committees are always governed by
the limit imposed upon petitioners by the
Referees. The petitioners here are not en-
titled to go into the whole principle of the bill.

Pope: We ask on the question of transfer to
be heard against part 3.

Bidder: Part 3 deals generally with the

whole undertaking and to give the petitioners a *locus standi* against Part 3 would entitle them to go into the whole question not only of the transfer of the Ribble branch railway, but of the undertaking generally. As the petitioners decline to accept what we offer them, I shall contend that they are entitled to no *locus standi* on this question. They are not the North Union railway, but only lessees of the North Union. They are no partners of ours and never were. The North Union company are our partners, and we do not propose to alter the provisions of the Act of 1845 as to the control and management of the line by a joint Committee, one-half of the members appointed by the Ribble navigation and one-half by the North Union company. In the case of a private partnership A. may have a right to object to the assignment of B.'s share to C. and to C.'s admission into the partnership without A.'s consent. That is not the case here. The North Union have parted with their share of the profits to their lessees the petitioners, who can have no voice to prevent the Ribble Navigation company from dealing with their share. The existing position and control of the Ribble branch railway was expressly reserved by clause 34 of the bill, which merely substitutes nominees of the council for members of the board now nominated by the navigation company.

Sir F. S. REILLY: This arrangement between the petitioners and the North Union company being made by statute, must we not treat the petitioners as *quasi* owners of the Ribble branch?

Bidder: They are only lessees

Sir F. S. REILLY: For a practically indefinite time?

Bidder: There is no privity between them and us, and they are not our partners. As to the tunnel, the petitioners have no landowners' interest in it. The same question arises over and over again in the case of water and gas pipes laid under roads. This is a conduit four feet in diameter, built of brick underground, for the purpose of feeding a canal, but the conduit has been abandoned for the last 40 years and is now used by the corporation. The leading case on this question is that of the *Hindley Local Board* (No. 2) *Bill* (2 Clifford & Stephens, 229).

Mr. BONHAM-CARTER: How is the grant described in the deed?

Bidder: It is an agreement between the corporation and the canal company reciting that the latter have erected a steam engine for pumping water from the Ribble into the canal, "and have, with the consent of the corporation,

made a tunnel or watercourse underground through and under a certain piece of land belonging to the corporation," that is Preston Marsh; and then the operative words are that the corporation, for themselves, their successors and assigns, in consideration of the sum of £25, covenant with the company, their successors and assigns, "that the company shall and may from time to time, and at all times hereafter, have, hold, use, enjoy, support and repair so much of the said tunnel or watercourse as lies in and under the grounds called Preston Marsh."

Mr. MELDON: That does not seem to be a grant of land at all. The deed was not made till the tunnel was made. Is it more than a covenant that the company may have the use of this land for the special purpose stated? The words are equally applicable to an easement as to a grant of land.

Sir F. S. REILLY: The *Liverpool and Birkenhead Subway* case (2 Clifford & Rickards, 265) seems to be in point.

Bidder: There are many gas and water cases in which a *locus standi* has been disallowed on the ground that the petitioners had only an easement in land.

Sir F. S. REILLY: The case of gas or water companies acquiring an easement for their pipes under statutory powers differs from a grant by deed.

Bidder: I submit not. The only difference is that the right in the one case is obtained by statute, and in the other case by deed.

The CHAIRMAN: Here there is a covenant that the grantee shall hold, use, and enjoy, support and repair the tunnel for ever. That is equivalent to a grant. We do not want, for *locus standi* purposes, a formal conveyance of the soil. If I covenant that you shall quietly enjoy and hold and use for ever, that is equivalent to a grant to you.

Bidder: Not of an interest in the land. If you say that these petitioners under a deed giving them enjoyment in perpetuity of the tunnel under the soil have an interest in the land which will support a *locus standi*, then *a fortiori* the owner who under statute has power to lay a water pipe in perpetuity has an interest in the land.

Mr. BONHAM-CARTER: Acts of Parliament under which gas and water companies obtain power to lay pipes, are so framed as to give those companies the least possible interest which is necessary for their purpose. An easement is all they ask for; and the practice of the Court has been to treat their rights in respect of such pipes merely as easements. Here there is a deed in which certain words are used conveying an interest.

Bidder : An interest in land must be the subject of grant. Here there are no words of grant. When a company under an Act of Parliament obtain the right of putting a water pipe under road they have the exclusive enjoyment of the space occupied by their water pipe just as much as these petitioners have in the tunnel.

Mr. MELDON : The words in the deed are applicable to the grant of an easement; they are unusual in the case of a grant of land.

Bidder : Yes. If the Court hold that the petitioners have a right to be heard in respect of that which, as I contend, is only an easement, must follow that the decision in the *Hindley* case was wrong.

Pope : In recent cases the Court has not acted upon that strong doctrine with regard to easements. (*Caledonian Railway (Additional Powers)* 11, 2 Clifford & Rickards, 75.)

Bidder : That differs from the present case, for the feuers had rights in the surface.

Mr. BONHAM-CARTER : How far below the surface is this tunnel?

Bidder : Eight feet.

Sir F. S. REILLY : In the *Hindley* case the water pipes were laid under public roads.

Bidder : That makes no difference, for the end of a road is subject to private ownership.

Sir F. S. REILLY : There seems here to be in fact a direct grant to the canal company of the space occupied by the tunnel.

Bidder : It gives the canal company the right to have the tunnel there, and is the grant of an easement only. In the *Hindley* case Mr. Rickards said there was no instance in which it had ever been held that an easement gave a landowner's *locus standi*; and this was said, though I contended that the company had exclusive dominion in perpetuity over so much of the land as the pipes occupied. As to the rating question, the *Leeds* case cited for the petitioners is really against them. The corporation of Leeds were asking Parliament to take away from the railway companies an exemption which they then enjoyed, and to say that recreation grounds in Leeds should be a charge upon the borough rate, which would give them no exemption, whereas under the existing local Act, recreation grounds were a charge upon the improvement rate, which gave the railway companies exemption.

In this case the corporation already have authority to contribute to the Ribble navigation works, and at present any such contribution falls upon the borough rate. We are now asking the power to take over the navigation company's undertaking, and to execute works of the same character, which will fall in a very contingency upon the same fund. We are not, therefore, seeking to change the in-

cidence of taxation, as in the *Leeds* case. We are transferring no burden from the improvement rate to the borough rate, and are in no way altering general or special legislation. The petitioners, not the corporation, are seeking to alter the *status quo*. They are taking advantage of our application to Parliament in order to obtain an alteration in the legislation now applicable to them.

Sir F. S. REILLY : In a case decided since the *Leeds* case, *Hull Lighting Bill* (2 Clifford & Rickards, 256), the North-Eastern railway company got their *locus standi*.

Bidder : There I think there was private ownership of certain streets, and the argument for the railway company was also that the bill proposed to divert to the borough rate expenses which, under the Public Health Act, would fall upon the improvement rate, in which case the petitioners would be entitled to exemption.

The **CHAIRMAN :** We think the London and North-Western and the Lancashire and Yorkshire railway companies are entitled to a general *locus standi*.

Locus standi Allowed.

Agents for Petitioners, *Sherwood & Co.*

Agents for Bill, *Dyson & Co.*

SOLWAY JUNCTION RAILWAY BILL.

Petition of (1) LONDON AND NORTH-WESTERN RAILWAY COMPANY and (2) NORTH-EASTERN RAILWAY COMPANY.

5th April, 1883. — (Before Mr. PEMBERTON, M.P., Chairman; Mr. PARKER, M.P.; and Sir F. S. REILLY.)

Railways—Running Powers over Railway jointly worked by Petitioning Companies—Formation of Junctions—General Locus Standi claimed—S. O. 133—How far Formation of Junctions affects a Working Company—Railways Clauses Act, 1863, sec. 9.

The bill authorised the extension of an existing railway, and the formation of junctions with a railway jointly worked by the petitioners, over which the bill also conferred running powers upon the promoters. The petitioners claimed to be heard generally upon the questions of junctions and running powers as being an essential part of the scheme before Parliament, and also under S. O. 133. The claim to a general *locus*, however, was not sustained, and the

promoters, while conceding the right of the petitioners to be heard as to the running powers and right to use a station contained in the bill, objected that as the petitioners were only the workers and not the owners of the railway with which the junctions were to be formed, they were not the proper parties to be heard on this question (Railways Clauses Act, 1863, sec. 9), but were merely on the same footing as a company having running powers over a railway so sought to be joined :

Held, however, that the petitioners were entitled to a *locus standi* on the question of the formation of junctions as well as that of running powers.

The *locus standi* of the petitioners was objected to, because (1) the petition does not allege or show nor is it the fact that any railway, land, house, or property of the petitioners will be or can be taken or interfered with under the powers of the bill; (2) the petitioners as shareholders in the Cockermouth, Keswick, and Penrith railway company have no separate right to be heard as such shareholders, nor did they dissent at the meeting of the Cockermouth, Keswick and Penrith railway company called pursuant to the Standing Orders at which that company approved the bill; (3) the railways and works intended to be authorised by the bill will not affect or interfere with any railways, works, lands or property of the petitioners, and will not, nor is it alleged in the petition that they will, compete with or divert traffic from any railway belonging to or worked by the petitioners; (4) the petitioners have no Parliamentary or other rights as regards the maintenance, construction, or alteration of the Cockermouth, Keswick and Penrith railway, nor have they a right to be heard on any question of the junction therewith of any other railway; (5) the railways proposed to be authorised by the bill and the working and management thereof do not in any manner affect the petitioners, or any of their powers, rights, or interests, or any traffic or other facilities belonging to them; (6) the petitioners, as workers of the passenger traffic on the Cockermouth, Keswick, and Penrith railway are not entitled to object to any of the objects of the bill, except so far as it seeks (clause 44) running powers over a part of that railway, as complained of in paragraph 6 of the petition; (7) the petition does not allege or show that the petitioners have any such interests in the

objects and provisions of the bill as entitles them to be heard against it.

The *locus standi* of the North-Eastern railway company was objected to on similar grounds, *mutatis mutandis*, as those taken in the objections to the *locus standi* of the London and North-Western railway company.

Pope, Q.C. (for the London and North-Western railway company) : The Solway Junction railway starts from Annan, and thence partly by running powers over the North British railway, and partly by its own line, its powers of conveying traffic extend to Brayton, whence it is proposed by the bill to extend the existing line to Bassenthwaite, forming there a junction with the Cockermouth, Penrith and Keswick railway, over which running powers are taken to Keswick. We work the Cockermouth railway jointly with the North-Eastern railway company, we taking charge of the passenger traffic, and the North-Eastern company of the mineral traffic; and, consequently, our right to be heard is practically the same as that of the North-Eastern company, and the decision in our case will be regarded as binding on their claim to be heard also. The Solway company are not themselves a working company, being worked by the Caledonian railway company, and last year the North British railway company also obtained running powers down to Brayton over the Solway company's railway, so that the Caledonian and North British companies both use the Solway railway. It is conceded that we have a limited *locus standi* in respect of the running powers taken by the bill over the Cockermouth railway, and as the bill authorises junctions to be made with that railway, and S. O. 133 gives a discretionary power to the Court to grant a general or a limited *locus standi* in these cases, we submit that in this case, where the running powers over the Cockermouth railway to Keswick form an essential part of the scheme before Parliament, we are entitled to be heard generally against that scheme, which would be incomplete and valueless without the essential portions of it that relate to junctions with and running powers over the Cockermouth railway. (*Alcester and Stratford-on-Avon Railway Bill*, on *Petition of Midland Railway Company*, 2 Clifford & Stephens, 127.) It is evident that the scheme will bring a great deal more than the mere traffic between Brayton and Bassenthwaite upon the Cockermouth railway, and that it must be intended to bring the North British into Cumberland.

Jeune (for promoters) : Even if the petitioners were the owners of the Cockermouth railway, they would not be entitled, according to a series

as of this Court, to a *locus standi* to more than the running powers over and station of junctions with that line; and where they are only the working and owning company. In the *Birmingham and Oxford Junction Railway Bill* (2 Clifford & Rickards, 273), Mr. Rickards says that a working company is not entitled to be within S. O. 133.

AIRMAN: How do you distinguish the case of the *Alcester Railway Bill*?

The petitioners were there the main company, and as a matter of fact the case was never raised as between a general company and a *locus standi*. I concede a limited *locus standi* against the running powers and the Keswick station, but not against the formation of junctions in the case of a working company.

AIRMAN: The making of the junctions during construction, interfere with the running of the line.

The owning company could at any time stop and make a junction, or any slight alteration in their line, provided they did not lay down a different one.

AIRMAN: In the case of a lease, they cannot interfere with their lessees. Their petition would, however, probably be always allowed by an agreement. The owning company could have no right to do anything that would interfere with the proper working of the working company.

The mere making of a junction does not interfere with the proper working of the line of the working company. The use of it may.

AIRMAN: The working of it may interfere. I have not to go so far as to say "will not." If it may do so, it is enough. In the case of a junction, you must interfere with the working of the line.

We should be bound to do it so as not to interfere with the traffic. The same question appears to have come before the Court in the case of the *Annan Waterfoot Dock and Railway Bill* (3 Clifford & Rickards, 1). From the Railway Clauses Act, 1863, sec. 9, it is clear that the making of a junction is committed to the charge of the owning company. It is only on a level with the case of a company with running powers objecting to the formation of a junction.

AIRMAN: We think the petitioners are not to be heard against the junction, so far as physical construction is concerned, as they seem to have no protection during the period of construction, but not as to the making the junction or of constructing

Jeune: We admit the right of the petitioners to be heard against clause 44 as to running powers.

The CHAIRMAN: That decides the case of both the petitioning railway companies.

Locus standi of London and North-Western Railway Company *Disallowed*, except as against so much of clause 4 as authorises railway No. 3, so far as relates to the formation of the junction with the Cockermouth, Keswick and Penrith Railway, and clause 44, and so much of the preamble as relates thereto.

Locus standi of the North-Eastern Railway Company *Disallowed*, except as against so much of clause 4 as authorises railway No. 3, so far as relates to the formation of the junction with the Cockermouth, Keswick and Penrith Railway, and clause 44, and so much of the preamble as relates thereto.

Agents for Petitioners, *Sherwood & Co.*

Agents for Bill, *Tahourdin & Hargreaves.*

SOUTH-EASTERN RAILWAY BILL.

Petition of LONDON, CHATHAM AND DOVER RAILWAY COMPANY.

15th March, 1883.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE-PALMER, M.P.; Mr. PARKER, M.P.; Mr. MELDON, M.P.; Sir JOHN DUCKWORTH; Sir F. S. REILLY; and Mr. BONHAM-CARTER.)

Practice—Distinct Issues raised by Petition heard and decided separately—Objection to Locus Standi not specifically raised in Notice—Locus Standi Disallowed, in absence of Specific Objection.

Railway, Partnership in Lease of—Separate Agreement to work—Evasion of Statutory Partnership in Railway.

The London, Chatham and Dover company petitioned against a South-Eastern railway bill, on the ground that it would enable the promoting company to make a separate agreement with the East London company for working and using their undertaking; whereas the East London was the subject of a statutory arrangement under which the Chatham, the South-Eastern, and other companies in a certain contingency were bound to lease this railway jointly. The South-Eastern company did not deny that if the facts had been as alleged, the

petitioners would have been entitled to a limited *locus standi* against the clauses sanctioning the working and user of the line in question, but they showed that the bill only applied to a portion of the East London railway, expressly excluded under the statute from the arrangement for the joint lease :

Held, that, their allegations as to the scope of the bill being obviously erroneous, the petitioners had no *locus standi* on this branch of their case, although the notice of objection did not specifically raise this issue.

In dealing with a petition which raises distinct issues, the Court will, in their discretion, sometimes hear and decide upon each issue separately.

The *locus standi* of the petitioners was objected to, *inter alia*, because (1) the petitioners are not owners, lessees, or occupiers of any land, house, railway, or property which will be taken, run over, used, or affected under the bill; (2) they have no such right or interest in the East London railway as entitles them to be heard, and are only entitled, if at all, to be heard against so much of clauses 22 and 23 of the bill as authorises the promoters to run over and use the railway authorised by the East London Railway Act, 1882, and to enter into agreements in respect thereof, and so much of the preamble as relates thereto.

The CHAIRMAN said that, as the petition disclosed three distinct points, the Court would dispose of them separately.

Pope, Q.C. (for the London, Chatham and Dover railway company): By clause 22 of the bill the company seek power to run over and use with their engines and carriages, and for the purpose of traffic of every description, so soon as the same shall be completed or ready for traffic, *inter alia*, the railway authorised by the East London Railway Act, 1882, and described in sec. 4 of that Act; and by clause 23 power is sought to enable the company, on the one hand, and the East London, Metropolitan, Metropolitan District, Brighton and Chatham companies, or any or either of them on the other hand, as lessees or intended lessees of the East London railway, under the powers in the Act of 1882, to agree with reference to such running over and use. We object to these powers, and submit that no agreement of this nature should be entered into unless we and all the other companies just mentioned are parties thereto. The

short point is this:—The line over which the company propose to take separate powers of running, upon terms which may be separately agreed to between the South-Eastern and the East London, is a line in respect of which Parliament last year constituted what might be called a compulsory *quasi* partnership, in which the Chatham company were interested; and the bill represents the common device of a partner who wishes to evade this obligation by coming without communication, and, it may be, against the interest of his co-partner, to make a separate agreement in regard to the very subject-matter of the partnership itself. We say that this ought not to be done by one partner behind the back of his statutory partner, without affording a hearing to the latter.

Worsley-Taylor (for promoters): If the Chatham company were really partners with ourselves in the line over which we now seek to run, they would have a right to be heard, but this is not so. The fact is, that by this bill we take power to run over, not the East London railway, but the railway authorised by the East London Act of 1882, and described in sec. 4 of that Act as a railway two furlongs in length, which, “except as hereinafter and otherwise provided,” was to be part of the East London railway undertaking. If it were not for the words “except as hereinafter and otherwise provided,” the line in question would be clearly part of that undertaking, and then any company getting power to run over the East London would be able to run over that line as part of the East London. The Act of 1882, however, goes on to provide (sec. 38):—“When, and so soon as the railway by this Act authorized, or any other railway connecting the railway of the company with the railway of the Metropolitan and Metropolitan District companies shall have been completed, the company shall grant to the lessees, and the lessees shall accept as from the date of such completion and opening, a lease in perpetuity of the East London, and all stations, buildings,” lands, &c. “exclusive of any surplus lands, and exclusive of the railways and works by this Act authorized.” That is, the lease to which the Chatham company and ourselves may be parties under the Act of 1882 is a lease of the East London undertaking, excepting the line authorized by that Act, which is the line we now seek power to run over. It is clear, therefore, that the Chatham company have no claim as partners with us in this line, and there is an end of the argument.

Sir F. S. REILLY: The notice of objection does not indicate that this is the answer you were going to make.

It is sprung upon us by surprise.

AIRMAN: At all events you have no *locus standi* on this point.

Locus Standi Disallowed.

Medway Competition occasioned by—Railway, Exemption of, from Conservancy Representation of Railway Company Conservancy Board—Railway Company as Agents of Conservancy Board—Distinct of Railway Company, as constituents Conservancy Board—Undue Preference to Competing Railway.

powers of the Hundred of Hoo Railway 1880, the South-Eastern company, coming with the Chatham railway company continental traffic from the Medway, connected a pier or jetty at the terminus of the line. In 1881, a Medway Conservancy was passed, constituting a conservancy, elected in part by traders and others, and by owners of river-side property, under whose jurisdiction was the navigation and the whole fore-land of the Medway, with authority to collect dues. Clause 8 of the bill proposed to exempt the pier and make subsidiary works; while clause 10 proposed to exempt the pier, as so enlarged, from the provisions of the Conservancy Act, thus relieving it of the payment of conservancy dues. The Chatham company, who ran steamers to the continent from Queenborough, and had an interest in the Medway as owners of river-side premises at Rochester, objected against clause 10, on the ground that the proposed exemption would give the South-Eastern an unfair advantage in competing for continental traffic. It was urged that the petitioners were represented by the Conservancy Board, whom they helped to elect, and who had petitioned against clause 10, their *locus standi* being established:

the petitioners were not represented by the Conservancy Board on the question of exemption by them, but had a distinct interest in being heard against clause 10, on the ground of the undue preference which might be obtained by the South-

Eastern company as competitors for continental traffic.

The *locus standi* of the petitioners was further objected to, because (3) so far as their allegations relate to the sanctioning of the construction of the existing jetty, pier, or landing-place, and the proposed widening and extension thereof in the river Medway, the petitioners have no such right or interest in the river Medway or the conservancy thereof as entitles them to be heard. The conservators of the river Medway are the only proper parties, if any, to petition against the bill in respect of the rights and powers sought by the bill so far as they affect the river Medway and the conservancy thereof, and they have petitioned against the bill.

Pope, Q.C.: Our second ground of objection is to the proposals in the bill with respect to the jetty or landing-place constructed by the company in the Medway adjoining the terminus of their Hundred of Hoo railway. By clause 7 the company seek to have the construction of this jetty sanctioned and confirmed by Parliament; by clause 8 power is sought to extend, lengthen and widen it, and to make all necessary works and conveniences in connection therewith; and clause 10 enacts that this jetty, pier, or landing-place, both as it exists now and when widened and extended, with the subsidiary works, "shall be exempt from and not be subject to the powers and provisions of the Medway Conservancy Act, 1881, anything to the contrary contained in that Act notwithstanding." In other words, at the end of a competitive line which, notwithstanding our strenuous objections, was authorised in the hands of the South-Eastern down to the shores of the Medway, we being on the opposite shore at Queenborough, and also at Rochester, the South-Eastern have constructed a pier, obviously for trans-channel traffic, which they now propose to enlarge and extend, exempting themselves from the Medway conservancy dues to which we shall be subject. Upon the ground of equity in the competition for trans-channel traffic, which Parliament has so jealously guarded, between these two keenly competing companies, we ought to be heard upon the question whether it is expedient that South-Eastern traffic at this point should be exempted from dues which we are obliged to pay. Even if this were a bill promoted by the Medway Conservancy itself, we should say that that Board had no right to give an undue preference to the South-Eastern over the Chatham and Dover company; and they have no right to assent to provisions in a bill giving to traffic

going by the Hundred of Hoo railway a preference to traffic brought to Rochester or Queenborough by the Chatham and Dover. As we allege in our petition, we have an interest in the Medway Conservancy by reason of our works at Queenborough, and our river frontage at Rochester, and our interest in the proposed Medway docks adjacent to our railway at Rochester. We have power to make a pier there; and being ourselves bound by the provisions of the Conservancy Act, and subject to the tolls of the Board, there is no better reason why the South-Eastern should be relieved from these obligations than why we should be.

Worsley-Taylor (in reply): The Medway Conservancy Board have petitioned against our bill, and have an admitted *locus standi*.

Sir F. S. REILLY: But the South-Eastern and the Conservancy Board might come to an arrangement.

Worsley-Taylor: The Hundred of Hoo railway, which is now practically South-Eastern, was authorised in 1880, and the company got power to make a pier or jetty into the Medway at the end of that railway. The works in connection with the pier, so far as they were below high-water mark, were put under the jurisdiction of the Board of Trade, were to be approved by them, and to be maintained, subject to their approval. In 1881 the Medway Conservancy Act was passed, incorporating a new governing body, transferring to them all the rights of the Crown in the bed and foreshore of the river, and all the rights of the Rochester corporation in the same, and giving them jurisdiction over the whole of the bed and foreshore, and over the navigation of the Medway. Although our pier and works were placed under the jurisdiction of the Board of Trade by our Act of 1880, we, with all other like interests, should have been transferred to the jurisdiction of the Conservancy Board in 1881, had we not procured in the Act of 1881 a saving clause, which, as we contend, specially exempts us from the operation of the Act. Assuming, however, that the Medway Conservancy have or claim jurisdiction over our existing pier, they have a perfect right to come to Parliament and ask that this jurisdiction shall be continued. This is what, in fact, they do in the petition they have presented; and as a certain number of the conservators are elected by the traders and freighters, people owning docks and so on, the Chatham and Dover company are constituents, and are excluded by the doctrine of representation from appearing on this matter. The Conservators are clearly the people to be heard upon the question affecting Conservancy rights and tolls.

Mr. MELDON: You seek to obtain by the bill a decided pecuniary advantage over the Chatham and Dover company, your competitors for traffic. The question is, whether the Conservators represent the petitioners as to that point?

Worsley-Taylor: If the Chatham company are entitled to be heard, so would be the owners of every yard of foreshore along the Medway banks; their petition contains no allegation which could not be made by every other owner of such property.

Pope: It is a question of degree. As things stand, the Conservators could not exempt the South-Eastern from dues. Now statutory powers are being sought to enable them to make a distinction between the South-Eastern and other traders.

Worsley-Taylor: The Conservators represent the petitioners, who are bound by the corporate seal.

Sir F. S. REILLY: Unless they have a distinct interest; and that is the whole question here.

Worsley-Taylor: Such an interest must be properly alleged; but there is no allegation in the petition that the Chatham company have any interest apart from that possessed by anybody else on the banks of the river.

The CHAIRMAN: We think the petitioners are entitled to a *locus standi* upon this point.

Locus standi Allowed against clause 10.

Continental Traffic Agreement, alleged Breach of
—Traffic, Apportionment of, between Railway
Companies—Common Fund, alleged Reduction
of, by single Railway Company—Partnership
in Railway Traffic.

The South-Eastern company asked for statutory powers to agree with any individual companies for the construction and maintenance, user and working of jetties, piers &c., on any part of the coast to which its company's railways extended. The Chatham company alleged that these general powers might be exercised to their prejudice in evasion of the continental traffic agreement of 1865, under which the proceeds of all traffic of the two companies, going to and from the continent between certain defined places and districts, went into a common fund and was apportioned between the two companies. The petitioners contended that

under the bill the South-Eastern company might open up a new route to the continent without consulting them, and that the cost of working such new route might diminish the amount of the common fund divisible between the two partners, though one of these would have no voice in the matter :
held, upon the authority of a decision of 1882 (3 Clifford & Rickards, 219) that the petitioners had no *locus standi*.

The *locus standi* of the petitioners was further rejected to, because (4) no right or interest of theirs is or can be affected by the powers sought in clause 26; such powers in no way affect the agreement dated September 7, 1865, and the existence of such agreement does not entitle the petitioners to be heard against clause 26 or any other provisions of the bill.

Pope, Q.C.: Our third objection to the bill arises under the continental traffic agreement dated September 7, 1865, which divides between the South-Eastern and Chatham companies, in certain proportions and as applied to certain districts, goods and passenger traffic of every kind, from and to London (including the stations specified in the definition of "London") *via* Dover and Folkestone and all other places between Margate and Hastings and the English coast, and to and from Calais and Boulogne, and all other places on the opposite coast. Clause 26 professes to enact that the company on the one hand, and any company or person duly authorised to construct and maintain any jetty, pier or landing-place on any part of the coast of Kent to which the companies' railways extend

the other hand, may make and carry into effect contracts or agreements with reference to the construction, use, and working of such jetties, piers or landing-places, or any of them.

We strongly object to these general powers, which would enable the South-Eastern to construct and maintain a jetty or pier on any part of the coast of Kent, and might be exercised to our prejudice for the purpose of evading the conditions of the traffic agreement. This question was to a certain extent raised last year by the Chatham company, and our *locus standi* was then disallowed. On argument, however, the Committee of the House of Lords gave us a *locus standi*, and upon an objection raised by Lord Redesdale, the promoters withdrew the clause. The argument on behalf of the South-Eastern company last year came to this: "The traffic proposed to be dealt with is either traffic within the agreement, or it is

not. If it is traffic within the agreement, *cadit questio*: you have your remedy under the agreement. If it is not traffic within the agreement, you have nothing to do with it." That was a forcible argument when the question was the mere dealing with a change in the direction of the traffic on the other side of the water. The position is totally different now, because this bill will authorise a change in the direction of the traffic, and the incurring, therefore, of fresh liabilities and responsibilities, on this side of the water. The agreement of 1865 provides that there shall be a common fund into which the gross receipts of each company from Continental and local traffic shall be paid, together with all subsidies, and then provision is made for the division of the fund. The amount of the common fund may thus be diminished by the increased working expenses of either of the two partners. We should therefore be heard against the attempt by our partner to establish on this side of the Channel a new route, the cost of working which may reduce the net amount of the common fund. We are entitled to go to Parliament, and contend that if any new route is to be opened by the South-Eastern, it shall be opened in consultation with us, and that one partner shall not be allowed to establish a new business at the expense of the partnership fund without such consultation.

Worsley-Taylor (in reply): The case decided last year puts the petitioners entirely out of Court. (*South-Eastern Railway Bill*, 3 Clifford & Rickards, 219.) The *locus standi* of the Chatham company was disallowed in that case, though the issue raised was far more within the purview of the Continental traffic agreement than this is. In that agreement traffic is defined to mean traffic of every kind carried and conveyed by the two companies, and includes the traffic carried by the two companies by their steam-boats between places on the English coast and the Continent within the limits defined. The bill of last year did apparently deal with traffic (1) from a place on this side of the water; and (2) to a place on the other side of the water, and *vice versa*. This bill only deals with traffic on this side.

Sir F. S. REILLY: The petitioners' case seems rather a weaker one than that of last year.

The CHAIRMAN: We think the Chatham Company has no *locus standi* on this point.

Locus standi Disallowed.

Agent for Bill, *Cooper*.

Agents for London, Chatham and Dover Railway Company, *Martin & Leslie*.

SWINDON, MARLBOROUGH AND
ANDOVER RAILWAY BILL

Petition of (1) SOUTHAMPTON HARBOUR BOARD.

23rd April, 1883.—(Before Mr. PEMBERTON, M.P.,
Chairman; Mr. HINDE-PALMER, M.P.; Mr.
PARKER, M.P.; Sir F. S. REILLY; and Mr.
BONHAM-CARTER.)

*Traffic, diversion of, from Harbour—Railway
Company, proposing to Construct Pier—Har-
bour Board, diminished tolls of, through
new Railway Pier—Competition of New
Pier with Existing Harbour—Steamboat Powers
of Railway Companies, objection to.*

*Practice—Petition, absence of Distinct allegations
in.*

In 1882 a company obtained powers to make a railway to the coast at Stone Point, opposite the Isle of Wight. The bill was opposed by the harbour board of Southampton who apprehended the diversion of traffic now passing through their harbour and yielding them considerable tolls; but their *locus standi* was disallowed on the ground that, as the bill did not propose the construction of a pier, or the running of steamboats, no competition could arise under it or injury be sustained by the petitioners. The railway company now promoted an omnibus bill by which they sought (*inter alia*) to make a pier at Stone Point and run steamboats to the Isle of Wight. The harbour board again petitioned, citing the decision of the previous year, and again alleging a probable serious diminution in their tolls under the bill. It was objected that the Court, in disallowing the petitioners' *locus standi* in 1882, did not thereby prejudge the issue now raised; that the petitioners had no right to oppose works to be constructed outside their jurisdiction for the accommodation of traffic to the Isle of Wight; and that the traffic so to be accommodated would come from a district which did not supply the traffic now passing *via* Southampton:

Held, that *prima facie*, a substantial diversion of traffic and consequent loss of revenue might arise under the bill; that under these circumstances any question as to the remoteness of the alleged competition was a

question of merits; and that the petitioners were therefore entitled to be heard against clause 4 authorising the pier and against the corresponding portion of the preamble, but not against the owning of steamboats or the making of the railway leading to the pier, the two points last mentioned not having been distinctly alleged in the petition.

(*Per Cur.*) "A *locus standi* is always given where there appears to be a substantial competition; the question always is as to the amount of competition."

The *locus standi* of the Southampton harbour board was objected to, because (1) no right, power, property, or interest of theirs will be taken or interfered with under the bill; (2) they will not be prejudiced by the construction of the proposed railway; (3) the intended pier or jetty will not be erected within their jurisdiction, and no competition entitling them to be heard can arise under the bill, which (4) does not propose to alter or repeal the Acts of Parliament mentioned in the petition; (5) the petitioners cannot be injuriously affected by the bill in such a way as entitles them to be heard; (6) no grounds are shown or exist giving them a right to be heard.

Saunders, Q.C. (for petitioners): This is an omnibus bill, and we seek to be heard against that part of it which authorises (by clause 4) the construction of a pier at Stone Point. On March 30, the promoters were allowed to be heard against the *London and South-Western (Various Powers) Bill*, under which that company might have absorbed the Isle of Wight railways, on the ground of the competitive routes which the promoters were proposing to open up by means of their authorised railway and the pier now proposed at Stone Point (*supra*, 306). Last year we sought to be heard against their bill for the line to Stone Point; but our *locus standi* was disallowed on the ground that, as only a line of railway was to be authorised, and not a pier, no case of competition had as yet arisen (3 Clifford & Rickards, 229). The case of competition is complete now that power is sought for making a pier. We are interested in traffic going to the Isle of Wight to the extent of £2,000 a year out of a total income from tolls of £10,000, and are therefore entitled to be heard against the making of a pier which must divert much of the traffic. We were let in against the *London and South-Western (Various Powers) Bill*, in order that

ard against a possible diversion the Southampton route under *tiori* we are entitled to be heard ion whether another company, no rights whatever to tap the affic, should be allowed to make steamships for this purpose. We ly, having no private interests to money we receive after pay-erest upon the mortgages or re-bonds is spent in improving and our jurisdiction extends to if not beyond. There is a d, whether the very site of the not within our jurisdiction.

PALMER: The petition only as a fact that the promoters seek s; it does not complain of this o; we ask to be heard against

ply): Although the petitioners ear, "wait till the company ask s," the Court did not thereby e did come for a pier the peti-ave a *locus standi*. Parliament he Southampton harbour board, a defined area (not including the posed pier), to improve the ect piers and do what they like y tempting vessels to use the ould be monstrous, however, to ves the harbour board the right making of any other dock, pier along the coast opposite to the It is as though a gas company the establishment of any supply electric lighting outside their

r: The petitioners say that your the effect of diminishing their

y new harbour or pier, whether at Plymouth, or even further mpete more or less with South- at the competition of Plymouth ions to the petitioners than any Stone Point can be.

v: That is a question of merits. o decide whether there is a case or not, and whether this pier traffic in respect of which the ay receive tolls.

esent ships go into Southampton charge their cargoes, which are aller vessels to Cowes. Suppose for the improvement of the a traffic would thereby be taken ton, but surely the petitioners

could not be heard against such a bill. If so, they would have a right to oppose the erection of piers and harbours anywhere in the Isle of Wight.

The CHAIRMAN: A *locus standi* is always given where there appears to be a substantial competition; the question always is the amount of competition.

Batten: A line must be drawn somewhere, and I submit it should be drawn here. The removal of the mail packets from Southampton is a much more serious competition; but surely the harbour board could not be heard against such a proposal if it were submitted to Parlia-ment. Here the proposal is to build a pier for the accommodation of passengers passing to and from the Isle of Wight, who would pay probably a halfpenny for the use of the pier: and the fact is that our railway, which will be connected with this pier, will serve an entirely different district from that which now sends traffic to the Isle of Wight *via* Southampton. We shall bring traffic from Cheltenham and the Midland districts; the South-Western railway traffic comes from London.

Mr. BONHAM-CARTER: London passengers might go by the South-Western line to Andover, and thence by your line to the new pier at Stone Point.

Batten: That is a route which, commercially, is hardly practicable. Once establish the doctrine that simple competition outside the area of petitioners entitles them to be heard, and every port would have the right to appear against the establishment of docks or piers in every other part of the kingdom whence similar traffic could be shipped.

The CHAIRMAN: We think the Southampton harbour board are entitled to a *locus standi* as to the construction of this pier.

Saunders: And as to the railway leading to the pier and the power of owning steamboats?

The CHAIRMAN: The petition does not make out much of a case against those parts of the bill.

Saunders: They are alluded to, though not much in the way of complaint. Then our *locus standi* will be against clause 4 and so much of the preamble as relates thereto?

The CHAIRMAN: Yes.

Locus standi Allowed against clause 4 and so much of the preamble as relates thereto.

Agents for Petitioners, Sherwood & Co.

Petition of (2) GREAT WESTERN RAILWAY COMPANY.

Railway Amalgamation—User of Station by Amalgamating Company — Amalgamation,

Effect of, upon user of Station—Running Powers possessed by Amalgamating Companies—Capital, consolidation of, alleged sole effect of Amalgamation.

The Great Western railway company petitioned against a bill for the amalgamation of the Swindon and Cheltenham by the Swindon, Marlborough, and Andover railway company, which had, under agreement, the right to run into and use the Swindon station of the Great Western railway. The petitioners complained of a possible abstraction of traffic if the amalgamation were sanctioned; they also complained that whereas Parliament had refused to give to the Swindon and Cheltenham company access to the Swindon station, this company would obtain the same object indirectly by virtue of the agreement between the petitioners and the amalgamating company. The promoters objected that, as they already had statutory powers to work the Swindon and Cheltenham line, and that company possessed no rolling stock, no increased traffic would be brought into the Swindon station owing to the amalgamation, and that having regard to the existing relations between the two companies, the amalgamation was in fact no more than a consolidation of their respective capitals:

Held, that the fact that the line of the amalgamated company was already worked by the promoters did not affect the principle of the decisions under which a wide latitude is allowed to petitioners against amalgamation bills; and that, as the agreement referred to appeared to be operative, and its intention and object might be infringed by the amalgamation, the *locus standi* of the petitioners must be allowed

(*Per Cur.*) "If an amalgamation between two railway companies will injure a third company, it does not much matter how such amalgamation is brought about, or what the previous relations of the parties amalgamating were to each other."

The *locus standi* of the Great Western railway company was objected to, because (1) their rights,

property and interests, and the interests of the districts accommodated by their railway, will not be interfered with under the bill; (2) no such competition or interest in the traffic of the districts accommodated by the railways of the promoters is alleged or shown entitling the petitioners to be heard; (3) the facts and circumstances alleged do not entitle the petitioners to be heard; (4 and 5) no such alteration of circumstances will result from the passing of the bill with respect to running powers or any traffic in which the petitioners are interested, and no such interest is alleged, as entitles them to be heard.

Saunders, Q.C. (for Great Western railway company): We seek to be heard against Part 5 of the bill which proposes an amalgamation between the Swindon, Marlborough and Andover, and the Swindon and Cheltenham extension railways. The former of these companies have running powers over portions of our system, up to our Swindon station, and under agreement they have certain rights of user of the station. The Swindon and Cheltenham company also have running powers over portions of our system, with certain rights of user of our Cheltenham station, but Parliament has expressly refused to give them running powers into or right to use our Swindon station. If this amalgamation is carried out, however, we shall lose the protection which Parliament has thus given to us in the use of our most important station. The Swindon, Marlborough and Andover Act of 1873 gives that company powers to agree with the Great Western for the use of the Swindon station; but these are not statutory powers in the ordinary sense. The company sought compulsory powers to run into and use our station, but Parliament refused its sanction to these powers. Under an agreement subsequently entered into with us we have given them facilities, but the agreement specifically states that these facilities are to be for the Swindon, Marlborough and Andover company. The agreement does not say that these facilities shall be shared by all the other companies lawfully using their railways: and paragraph 4 of the agreement declares that the powers thus conferred upon the Swindon company "shall be exercised in a manner hostile to the Great Western company."

The CHAIRMAN: You say the result of an amalgamation will be to over-ride this agreement?

Saunders: Yes; for the amalgamated undertaking would then have the right of running into the Swindon station, whereas the agreement distinctly intended that the right should be exercised only by the Swindon, Marlborough

over company. From the date of the act in 1879 the promoters have tried on more than one occasion to get rid of it. In 1880 the Swindon and Cheltenham company put running powers into the Swindon and Cheltenham bill, but Parliament rejected the application. In 1881 the Swindon, Marlborough and Andover company promoted a bill which contained a clause authorising "all companies lawfully running or using" their railways to run over a portion of our line near Swindon and Cheltenham station. That clause would have affected the South-Western as well as the Swindon and Cheltenham company, but Parliament rejected the proposal. By a bill now pending Parliament proposed that the Swindon, Marlborough and Andover line shall be worked by, if not by itself, but amalgamated with, the London and South-Western; and our *locus standi* against it, after objections taken, has been allowed. It is true that this bill does not propose to give the South-Western to our Swindon station, but the effect of it will be to let in the London and Cheltenham company, and we shall be before the Committee to see that the South-Western do not accomplish indirectly that which Parliament has repeatedly refused them to do directly. Besides this objection, as regards the use of Swindon station, we have other points which are generally raised against amalgamation bills. Parliament allows a right of way to railway companies interested in the existing course of traffic against an amalgamation which would alter the position from which Parliament must be presumed to have proceeded in passing the bills of the separate companies. When these companies are amalgamated under the bill their joint interests are more adverse to the Great Western than when the two companies are independent. As things stand at present, in various directions the traffic of one of these companies might be diverted to the Great Western to or from London. On the other hand, if there is an amalgamation, it will be the interest of the united companies to direct that traffic so that, instead of passing from Swindon to London, when it came from Marlborough or Cheltenham, they would carry it to Marlborough or to Andover, and send it over the South-Western to London. The amalgamation here will strengthen the hands of the people who compete with us; and on that ground alone, apart from the question of the traffic into Swindon station, we are entitled to bring before the Committee and ask for the insertion in the bill of provisions for facilitating the traffic if the amalgamation is to be allowed. As regards the amalgamation of the Bristol and Gloucester with the Great Western railway com-

pany proposed in 1867, the London and North-Western were heard, for though they were no nearer than Birmingham, it was held that they were interested in the direction of the traffic. So on the amalgamation of the Scotch lines the Great Northern and the North-Eastern companies were heard, though they were far distant. (*Smethurst*, 163.) Against the amalgamation of the Monmouthshire railway with the Great Western, the Midland company were heard (2 *Clifford & Rickards*, 243). The case of the *Eastern and Midland Railway Amalgamation Bill* (3 *Clifford & Rickards*, 143) is on all fours with this case.

Batten (in reply) : The case last cited differs totally from this. Here the Swindon, Marlborough and Andover company work the line with which they seek to amalgamate; there the company seeking amalgamation worked neither of the two lines which they wished to absorb; the working companies being the Great Northern and the Midland.

The CHAIRMAN : I suppose the principle is the same. The question always is whether the amalgamation, if carried out, may injure the petitioners. Every case of amalgamation must affect the opposing companies in different ways.

Batten : An essential difference between this case and the precedents cited, is that we already have statutory powers of working the London and Cheltenham extension; and there is no clause in the bill which in any way affects the Great Western or will cast any additional burden upon them. All we are now proposing is to amalgamate the capitals of the companies. How can the Great Western be affected by a proposal that the debenture debt of the Swindon and Cheltenham company shall be changed into the debenture debt of the Swindon, Marlborough and Andover company? Passengers from Cheltenham now pass into Swindon station over our system, inasmuch as we now work the Swindon and Cheltenham line. The bill gives no power to the Swindon and Cheltenham company to run with their engines and carriages into the Swindon station; and we shall not take one more passenger into the station than we can now take under the working agreement. After the amalgamation, if it is sanctioned, we shall work the traffic backwards and forwards in just the same way that it is worked now; not one more engine will pass over the line than passes over it at present; and the Great Western will continue to receive a certain toll for each passenger and for each ton of goods. The *Watford and Rickmansworth Railway Bill* (3 *Clifford & Rickards*, 107), is in point.

The CHAIRMAN : I do not know that it is of

much use to cite cases. In an amalgamation bill, a wider latitude is always allowed to petitioners than is given in ordinary cases, but each case depends entirely on its own circumstances.

Batten: In the *Bristol and Exeter* case the Great Western were not working that line, which makes the difference between the amalgamation and the one now proposed.

The CHAIRMAN: I do not know that that fact would affect the principle. If an amalgamation between two railway companies will injure a third company, it does not much matter how such amalgamation is brought about, or what the previous relations of the parties amalgamating were to each other.

Batten: You have never decided that the amalgamation of two companies, when the effect of amalgamation is merely to unite their two capitals, gives a *locus standi*.

The CHAIRMAN: Nor do I suppose that that would be the principle of our decision here. The question is whether the amalgamation of these two companies will not give them facilities which they do not now possess, and whether the agreement between the amalgamating company and the Great Western may not be used, after the amalgamation, in a way not contemplated by the Great Western company when they entered into it.

Batten: That agreement has nothing to do with the question; it was made prior to the passing of the Act of 1879 which gave us power to run into the Swindon station. We are not now under the agreement; we are in the Swindon station under statutory powers; the Great Western would have kept us out if they could.

Sir F. S. REILLY: And now you propose to take into the station upon your backs the company with which you wish to amalgamate?

Batten: Under the amalgamation the state of things would be the same as before. Their Act of 1881 already gives the Swindon, Marlborough and Andover company power to take into the Swindon station the traffic of the Cheltenham Extension company; what Parliament refused to the latter company was an independent access of their own to that station.

Sir F. S. REILLY: If you can now take the Cheltenham Extension company's traffic into the Swindon station as part of your own traffic, you might probably take it in in another way after the amalgamation.

Batten: No; we have agreed to work the Cheltenham Extension in perpetuity at 50 per cent. of the gross receipts. It can therefore make no difference whether we carry their traffic into Swindon station under the working agreement or by virtue of the amalgamation;

the amalgamation can make no difference whatever in the traffic going into the station.

The CHAIRMAN: A different company would be empowered to run into the station.

Batten: No. The Cheltenham Extension company have no rolling stock of their own, and by an Act of last year they have contracted themselves out of the power of possessing rolling stock of their own.

The CHAIRMAN: Do the petitioners admit that the agreement between them and the Swindon, Marlborough and Andover company for the user of Swindon station is superseded?

Mains (Solicitor to the Great Western railway company): No; that agreement is valid and is acted upon to this day. An award has been made under it fixing the terms upon which the Swindon, Marlborough and Andover company are to use our station.

Sir F. S. REILLY: The promoters say that the agreement, though never put an end to formally, has been superseded in effect by subsequent legislation.

Mains: I am quite unaware of any legislation superseding the agreement; if there is any such legislation, the promoters should point it out.

Batten: The arbitration and award were under our Act of 1873. That Act gave us running powers into the Swindon station upon terms to be settled by the Board of Trade.

Mr. HINDE-PALMER: But the agreement is dated May 6th, 1879?

Batten: Yes; the line sanctioned in 1873 entered Swindon station on the east side, crossing all the Great Western goods lines. In 1879 we obtained statutory powers to make a deviated line which was to be in exact substitution for the original line. The Act of 1879 received the royal assent on the 3rd of July that year, so that the agreement of May 6th not worth the paper it is written on.

Mains: Sec. 26 of the Act of 1873 enabled the two companies to agree as to the use of the Swindon station with reference to the line then sanctioned. In 1879, however, the deviated line was proposed, joining the Great Western line about a mile and a-half on the Bristol side of the station. In order to obtain access, therefore, to the station, it was necessary for the Swindon, Marlborough and Andover company to obtain running powers over that portion of our system into the station. We object strongly to any statutory powers of this kind in the hands of any company, and while the bill of 1879 was pending, we entered into this agreement with the promoters, who thereupon struck out of their bill the clause authorising the running powers. They only obtain

access therefore to our station over this mile and a-half of our line by virtue of the agreement.

The CHAIRMAN: After this statement, I think we must regard the agreement as still operative. We therefore allow the *locus standi* of the Great Western company.

Locus standi Allowed.

Agent for the Great Western Railway, Mains.

Petition of (3) Lord HENRY SCOTT.

Manorial Rights, as ground of Locus Standi—Fishing and Sporting in River and on Foreshore, interference with—Ownership, Evidence necessary to establish—Prima facie, proof of—Locus standi of Owners of Manorial Rights, Limited against Omnibus Bill.

A landowner petitioned against a bill for the construction of a railway and pier on the ground that a part of the foreshore over which he had certain manorial rights was within the company's limits of deviation, and that those rights would be injuriously affected under the bill. His ownership of the foreshore in question being disputed, the petitioner pointed out on the map the boundaries of his estate, and both he and his solicitor stated that he was entitled to manorial rights over a part of the foreshore shown on the deposited plans. On the other hand, the promoters called a witness who deposed that the petitioner was not rated to the poor in respect of the portion of foreshore in question:

Id, that, although the petitioner might not be assessed to the poor's rate in respect of the foreshore affected by the bill, yet as he and his solicitor had appeared and alleged an ownership of this property, there was a *prima facie* case of possessory rights entitling him to appear. The bill, however, being an omnibus bill, the petitioner's *locus standi* was limited to the works clause, authorising the interference complained of, and to that part of the preamble relating thereto.

On objection taken that, though a petitioner's ownership had been traversed, no docu-

ments of title had been produced in proof of such ownership:

(*Per Cur.*) The Court do not necessarily require that documents should be produced: it is sufficient if the petitioner himself, or his solicitor, states that the property affected has been for years in his possession or claimed by him.

The *locus standi* of Lord Henry Scott was objected to, because (1) no land of his can be taken compulsorily under the bill; (2) the promoters deny that any right, power, property or interest of his will be taken or interfered with; (3 and 4) the allegations in the petition are not such as to confer a *locus standi* according to precedent and practice.

Richards, Q.C. (for petitioner): Lord Henry Scott is the owner of the Beaulieu estate, consisting of a mansion called Palace House and upwards of 8,500 acres of land; and the part of the bill to which he objects is clause 4 authorising the construction of a line, 3 furlongs, 9 chains long, in the parish of Fawley, and a pier or jetty situate in the same parish and "in the bed, banks and shore of the Solent." The petitioner is lord of the manor of Beaulieu and entitled to the exclusive right of fishing, fowling, shooting and sporting in the river Beaulieu, and on its banks and foreshore. He is also entitled to rights of wreck and other manorial rights in respect of this river and the foreshore of the manor. In respect of these manorial rights he is assessed to the poor's rate. Under the bill the company will be authorised to enter upon, take and use a portion of the petitioner's foreshore, interfering with his manorial rights and inflicting a permanent injury for which no adequate compensation could be afforded.

Batten (for promoters): Our limits of deviation do not extend to the foreshore of the petitioner.

Richards: Yes, they do. I do not say that the promoters propose to take any of the petitioner's land, but they will interfere with rights which he claims under various grants from the Crown from King John downwards. He has let the right of fishing in the Beaulieu, and his rights of wreckage and other manorial rights have been recognised by the Board of Trade.

Batten: We say that the foreshore which is affected by the bill belongs to Mr. Foster, whose name, and not that of Lord Henry Scott, is in the book of reference; and Mr. Foster is also assessed to the poor rate for this property.

Richards: The fact that Mr. Foster's name is in the book of reference does not oust the

rights of the petitioner, who received no notice. Here is the assessment in the rate-book: "Name of occupier, Lord Henry Scott; name of owner, Lord Henry Scott; parish, Exbury; description of property, fowling and sporting rights, 430 acres, to the centre of the river Ex;" that is, the Beaulieu river. Then comes the estimated rent and rateable value. We claim in respect of foreshore rights extending over plots numbered 14, 15 and 16 in the book of reference, and coming within the limits of deviation. The *Belfast Harbour Bill*, *Petition of Lord Templemore* (3 Clifford & Rickards, 128), and the *Kingston-upon-Hull Docks Bill* (2 Clifford & Rickards, 109) are somewhat similar cases.

Lord Henry Scott pointed out on the map the property over which his rights extended.

Batten (in reply): The terms of the poor-rate assessment oust the petitioner entirely, because the boundary there described is the middle of the river, whereas our proposed works are on the other side of the river.

Richards: The mid-stream is only one of the boundaries of the land for which he is assessed.

Mr. PARKER: And it is the western boundary of the land for which he is assessed, not the eastern.

The CHAIRMAN: Lord Henry Scott has pointed out to us that he claims rights extending over the whole foreshore.

Batten: I will call a witness to prove the assessment.

Frederick Fry said he assisted in making the valuation in 1875, when the Beaulieu river was first assessed; he was not assessor now.

The CHAIRMAN: The witness cannot be put in as having anything to do with the rates, nor did he make the existing assessment; but he may be called as a person having local knowledge.

Witness added that Lord Henry Scott was assessed to the poor's rate in 1875 in respect of his fishing and sporting rights on the Beaulieu, in the parish of the same name, and in part of the parish of Exbury; but a portion of the foreshore between the boundary of the parish of Fawley and the mouth of the river, consisting of about 35 acres, was not assessed, no one having claimed any rights over it, and this was the portion affected by the bill.

The CHAIRMAN: There may not be proof of the petitioner's assessment to the poor rate, but as he has appeared and pointed out the property over which he claims these rights, such property being within the company's limits of deviation, we think he has made out a *prima facie* case of ownership.

Batten: He has not proved his claim by

producing any document, nor has he shown that he has ever exercised any right over these 35 acres of foreshore.

The CHAIRMAN: We do not necessarily require documents to be produced. It is sufficient if the petitioner himself, or his solicitor, states that the property affected has been his for years. (To the Petitioner's Solicitor): Have you read the documents of title to which the petitioner's counsel referred?

Witness: Yes.

The CHAIRMAN: In your opinion do they establish a *prima facie* claim to the rights alleged in the petition?

Witness: Yes.

The CHAIRMAN: Do the rights claimed in the petition extend to the mud-banks numbered 16 on the deposited plans?

Witness: Yes; to the foreshore.

The CHAIRMAN: We think a *prima facie* case is made out, and that Lord Henry Scott is entitled to a *locus standi*. The bill is an omnibus bill. Does the petitioner object to the whole bill?

Sir F. S. REILLY: Would not the *locus standi* be against clause 4?

Richards: We would rather not be limited to a particular clause; we are restricted to the allegations in our petition, and ask for a general *locus standi*.

Batten: The petitioner objects to the amalgamation and to our owning steamers.

The CHAIRMAN: We will allow a *locus standi* against clause 4 (the works clause) and so much of the preamble as relates thereto.

Agent for Petitioner, Ball.

Petition of (4) CORPORATION OF SOUTHAMPTON.

26th April, 1883. — (Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE-PALMER, M.P.; Mr. PARKER, M.P.; and Sir FRANCIS REILLY.)

Municipal Corporation, as Owners of Harbour Dues—Abstraction of Revenue from Dues, by Competition of New Pier—Partners in Harbour Revenue, title of, to Petition separately—Double opposition by Partners, in the same interest.

The corporation of Southampton, who received one-fifth of the dues levied by the harbour board of Southampton, petitioned against a bill for the construction of a pier which, as they alleged, would abstract traffic from Southampton and so diminish their income.

harbour board had petitioned, and *locus standi*, after argument, had been decided. The promoters therefore claimed the case of the two bodies being legally the same, they should not be at the expense of a double opposition at the same interest, and that the petitioners were sufficiently represented by the harbour board:

in a partnership composed, as in this case, of two corporations unequally interested in certain revenue, both were entitled to appear on separate petitions, as it was possible that one set of petitioners might be bought off by the promoters. The *locus standi* of the corporation was therefore pleaded against the works clause authorising the pier and against the corresponding clause of the preamble.

locus standi of the corporation of Southampton was objected to for the reasons given in the objections to the *locus standi* of the harbour board, and also because the state of the relations between the petitioners and the Southampton harbour board cannot give *locus standi* to the petitioners; moreover the harbour board are themselves petitioners under the bill.

Mr Stephens, Q.C. (for the corporation of Southampton): The corporation as well as the harbour board were allowed a *locus standi* in the *London and South-Western (Various Bill)* (*supra*, 306) by which the project to absorb the Isle of Wight railway, though not exactly on all fours with this, closely resembles it. The Marlborough and Andover company allowed a hearing, on their representation of the whole object of their extension to Stone Point, and of their present bill for the extension of a pier there, was to compete for the right traffic and that, if deprived of the pier, their expenditure would be to a certain extent useless. This being the object of the bill, we are clearly entitled to appear under the bill as interested in Isle of Wight railway, using *via* Southampton. We own one-half the dues levied by the Southampton harbour board, and have borrowed money upon the security of that revenue. The amalgamation therefore which diminished our income and associated the security on which we have our loans would affect us most injuriously. The competition and diversion of traffic

arising from the construction of the proposed pier at the end of the authorised railway, and from the company's ownership of steamers which, as the preamble recites, are expedient "in order to facilitate the transmission of traffic to and from their railway and pier." The preamble further recites that the company's railways are completed and opened for traffic; that those of the Cheltenham company are in course of construction; that the lines of the two companies, with the running powers which they possess over portions of the South-Western, Great Western, Midland and other systems, form a direct line of communication from Southampton and Stone Point to Cheltenham, and will also give continuous communication between the Midland and South-Western counties. Thus, by the proposed amalgamation with the Cheltenham company and the other proposals in the bill, a powerful railway confederation will be formed stretching from the Midland districts to Stone Point and there, by the company's steamers, reaching the Isle of Wight.

The CHAIRMAN: The case of the corporation seems to be one of competition and probable abstraction of tolls, and the question of amalgamation does not seem so important?

Stephens: We wish to show the character of the competition to which we shall be subjected, and that it will be increased by the amalgamation. But the mere fact that a new pier and a new line of steamers are proposed with an important system of railways to feed them, shows a *prima facie* injury to us through diversion of traffic and loss of income, and entitles us to be heard no less than the harbour board.

Leslie, Parliamentary agent (for promoters): In the absence of counsel, I may say that, the harbour board having been allowed a *locus standi* against this bill, we submit that we should not be put to the expense of fighting another set of petitioners upon what is really the same case.

The CHAIRMAN: The two petitioners are partners and one has an equal right of appearance with the other. If one set of petitioners were excluded, it is conceivable that the promoters might buy off the opposition of those whose *locus standi* had been allowed.

Leslie: The harbour board have the larger interest and might surely be trusted to represent the case of the corporation as well as their own. That both sides were allowed a *locus standi* against the *South-Western Bill* (*supra* 306) is probably owing to the fact that that was an amalgamation bill. The only interest of the corporation here is to receive from the harbour board a certain proportion of the dues. Their

case is already represented, and if they are allowed to appear, any mortgagee or preference shareholder would be entitled to a *locus standi*.

The CHAIRMAN: Mortgagees and shareholders stand in a different position. Here the partnership is divided in unequal proportions. Still, I think all the partners are entitled to be heard, where the partnership is composed of two or more corporations. The *locus standi* of the corporation of Southampton must therefore be allowed against clause 4, and so much of the preamble as relates thereto.

Locus standi Allowed, as limited.

Petition of (5) THE SOUTHAMPTON DOCK COMPANY.

Railway Company Proposing to make Pier—Competition of new Pier with Docks—Distance as test of Competition between Docks—Access to Docks, alleged obstruction of, by new Pier—Trade Premises, obstruction to, analogy between, and access to Docks.

A railway company having an authorised line to the coast, promoted a bill under which they sought to make a pier and to own and run steamers in connection with their railway. A company owning docks at a distance of about seven miles from the site of the proposed pier petitioned on the ground (1) of competition, the pier being intended as a part of a larger scheme of works; (2) that the pier would obstruct the access to their docks, as it would project into the channel up which vessels passed on their way to those docks. The promoters objected (1) that having regard to the distance between the docks and the pier, and the different traffic which they were respectively designed to accommodate, no such competition would arise as entitled the petitioners to be heard; (2) that the dock company had not the charge of the navigation, and were not entitled to represent the conservators in complaining of its obstruction:

Held, (1) that the test of competition was probable abstraction of traffic as well as distance, and that here the traffic to the docks was likely to be tapped by the promoters; while, though the pier might not be capable of accommodating the same kind of

traffic as the docks, the schedule of rates in the bill seemed to contemplate traffic of the same character; (2) that the petitioners' case was not merely obstruction of the navigation, as to which they did not claim to represent the conservators, but obstruction of the access to their docks, which was analogous to interference with the approach to trade premises on land. Under the circumstances the petitioners were allowed a general *locus standi*.

The *locus standi* of the Southampton dock company was objected to for the reasons set forth in the objections to the *locus standi* of the corporation, and also because the construction of the proposed pier in the Solent would not interfere with the navigation of the Solent or with the access to the petitioners' docks, quays and works.

Pembroke Stephens, Q.C. (for the Southampton dock company): In this case, also, as owners of docks on which we have spent £1,500,000, we complain of competition, abstraction of traffic and depreciation of the securities on which we have raised loans.

The CHAIRMAN: Does the bill authorise the making of any docks?

Stephens: It authorises the making of a pier, but the schedule contains a table of tolls which shows that the promoters contemplate the same sort of traffic as that which comes to our docks. There is good ground, therefore, for the allegation in our petition that the pier is part of a larger scheme which will ultimately be proposed, and will compete directly with our docks, quays and works. As the Court has heard, the bill proposes to authorise cross-channel steamers in the hands of the company; and the schedule provides for tonnage rates "for all steam or other vessels to or from all ports or places in Great Britain or Ireland to load or unload, per register ton, 6d.; for all such vessels wind-bound or otherwise, and not loading or unloading, per registered ton, 3d.; for all vessels to load or unload to or from foreign ports or places, per registered ton, 8d." This is the kind of traffic we get at our docks.

The CHAIRMAN: The charge for wind-bound vessels not loading or unloading is not one which would appear in a schedule relating to a pier only?

Stephens: No. We say that just as last year's railway was the stepping-stone to this year's pier, so the pier is a stepping-stone to something else.

The CHAIRMAN: Do any of the tonnage rates

le correspond with those levied by

Distinctly.

ER: How far is the site of
d pier from the Southampton

promoters): Eight miles.

You have granted a *locus standi*
petitioners' docks were farther away
posed docks, in cases where they
en miles distant (*East and West*
Bill, 3 Clifford & Rickards, 138;
Hoo Railway Bill, 2 Clifford &
). Besides competition and abstrac-
c, we allege that the proposed pier,
it will, 470 yards beyond high water
he channel or fairway leading to
, and in the narrowest part of the
osite Cowes Roads, will obstruct
m of the Solent, and ought not to

MAN: Are you the conservators of

No; but vessels bound to and from
d in whose safety we are interested,
w to exercise the greatest caution
the channel near the site of the
, and their situation, if the pier is
ding to the plans, may sometimes
al.

REILLY: You say that the access to
ill be obstructed?

Yes; so that our trade may fall off
e of the obstruction.

eply): As to the apprehended com-
hat the bill does is to authorise the
, short "pier or jetty" for the
anding passengers to or from the
t. No doubt in our schedule we
ates which may be levied on goods
but our works are of a totally
racter from the docks at South-
are designed for a totally different

MAN: That may be, but must we
schedule of rates as indicating
template?

e petitioners themselves say that
d pier is unfit and insufficient for
dation of vessels trading to foreign
e powers sought to take rates in
ch vessels show the intention of
to get powers to make more exten-
Stone Point, which will still more
compete with your petitioners'
is a distinct admission that the
t create any competition entitling
as *standi*.

REILLY: They say the scheme is a

bad one, but so far as it would operate at all it
would compete with them.

Leslie: The distance between this pier and
the petitioners' docks is more than seven miles.

The CHAIRMAN: In other cases we have given
a *locus standi* where the distance of the peti-
tioners' docks from the proposed works has
been greater than seven miles. The question is
not one of distance only; it seems to me this
pier would tap the traffic as it goes up the
Solent.

Leslie: It would certainly tap the passenger
traffic to and from the Isle of Wight.

The CHAIRMAN: And of ships going to the
Southampton docks?

Leslie: Looking at the character of the works
which are proposed, that is hardly possible.
As to the alleged obstruction to the navigation,
the Southampton dock company have not the
care of the navigation, and cannot be heard on
that point.

The CHAIRMAN: The petitioners do not claim
to represent the conservators, but say the pier
would interfere with the access to their docks.
Their case is like one of interference with trade
premises, such as stopping customers from
going to a public-house.

Leslie: The map shows that there would be
no such obstruction as is apprehended.

The CHAIRMAN: On that point we express no
opinion, but we think the Southampton dock
company are entitled to be heard on the ground
of competition. We cannot shut our eyes to
the schedule.

Locus Standi Allowed.

Agents for Bill, Martin & Leslie.

Agents for Petitioners (4) and (5), Simson,
Wakeford, Goodhart & Medcalf.

TAFF VALE RAILWAY BILL.

Petition of PONTYPRIDD, CAERPHILLY AND NEW-
PORT RAILWAY COMPANY.

16th March, 1883.—(Before Mr. PEMBERTON,
M.P., Chairman; Mr. HINDE-PALMER, M.P.;
Mr. PARKER, M.P.; Mr. MELDON, M.P.; Sir
F. S. REILLY; Sir JOHN DUCKWORTH; and
Mr. BONHAM-CARTER.)

*Railway Companies—Compulsory powers over
Land—Apprehended Junction with Private
Railway from Colliery—Bill of Petitioners be-
fore Parliament for affecting Similar Junction
—Competition, Improvement of Existing—
Railways Clauses Act, 1845, sec. 76.*

The bill conferred compulsory powers of purchase of certain lands upon the promoters. These lands lay between the promoters' railway and a private railway belonging to a colliery proprietor. The petitioners had a bill before Parliament in the same session for extending their railway so as to form a junction with the same private railway, and they contended that, although the bill did not take such powers, the promoters evidently intended to construct a railway over these lands so as also to form a junction with the private railway, and so compete with the railway projected by them, and the petitioners were allowed to argue their case upon the supposition so contended for. The promoters pointed out that the lands over which the bill took compulsory powers did not extend to the private railway, and that it was competent for the colliery proprietor who also owned that railway at any time to form a junction with their railway under the provisions of the Lands Clauses Act, 1845; and further that the private railway already formed a junction with their own railway:

Held, that the bill at the most improved an existing competition as against the petitioners, who were therefore not entitled to be heard.

The *locus standi* of the petitioners was objected to, because (1) it is not alleged that the bill contains nor does it contain any provision for taking or using any railway, land or other property of the petitioners, nor have the petitioners any right or interest in the lands referred to in the 3rd paragraph of the petition, nor are they seeking to obtain any such right by the bill now being promoted by them, as mentioned in the petition; (2) the petitioners' Act of 1878, and the provisions contained therein, and the petitioners' rights and powers thereunder referred to in the 5th, 6th, 7th, 8th and 9th paragraphs of the petition are not affected by the bill, and those paragraphs do not show any ground on which the petitioners are entitled to be heard against the bill; (3) even assuming (which the promoters do not admit) that their object in acquiring the lands in question is as stated in the 10th paragraph of the petition, the peti-

tioners have no such interest in that object, and are not so affected thereby as to be entitled to be heard against such acquisition; (4) even assuming that the petitioners' statements in the 10th and 11th paragraphs of the petition, as to the interception of traffic as therein mentioned, were well founded (which the promoters deny), the promoters contend that the petitioners have no such interest in the traffic in question as to entitle them to be heard in respect of any possible interference therewith; (5) the petition does not disclose any ground which, according to the practice of Parliament, entitles the petitioners to be heard against the bill.

Batten (for petitioners): Our authorised line runs from Pontypridd to Caerphilly, but we have in this session of Parliament a bill for an extension of our railway from Pontypridd to what is called Nixon's railway, with the object of obtaining the carriage of Mr. Nixon's steam navigation coal to the ports. The Taff Vale company, seeing what we are doing by this bill, are seeking compulsory powers to take some land with the object of making a junction with this same Nixon's line. We have made arrangements for the use of Nixon's railway, and the object of the promoters in taking this line is to abstract traffic, which would otherwise come from Nixon's railway on to our line. The Pontypridd extension proposed this year would form a through route by which the Pontypridd, Caerphilly and Newport company would be able to take coal from this district. The Taff Vale company, therefore, if they are allowed to have compulsory powers over one of these pieces of land lying between their railway and Nixon's railway, would be able to lay down on that land a railway to compete for the same traffic that we have a bill in Parliament to enable us to accommodate. If the Taff Vale company had applied this Session for power to make a railway to occupy this land, which they propose to take, and to form a junction with the same railway that we propose to form a junction with, then our scheme and the scheme of the Taff Vale would have both gone before the same Committee as competing schemes, and in fact the Taff Vale do petition against us as a competing scheme for this traffic, but by an ingenious device (the distance between their railway and Nixon's railway being very short) they do not ask powers from Parliament to construct a railway; they simply ask for compulsory powers to take all the land that is needful for the construction of a railway. No doubt after obtaining the land they would construct the railway, and, being a mineral railway, they would not be obliged to have the consent

Board of Trade before they opened it; though they would not be able to take any in it, yet as the line would be a short link into a long line of their own, they will afford to carry traffic a few hundred tons or nothing if they could abstract the same from other companies.

CHAIRMAN: You do not propose to take any of the land scheduled by the bill?

SAUNDERS: No. By the bill we take power to complete the undertaking, including his land.

SAUNDERS, Q.C. (for promoters): We do not intend to take any portion of Nixon's under-

SIR F. S. REILLY: As I understand your question you do not allege that you will suffer any loss unless you get your bill this year extension line?

SAUNDERS: That is so.

CHAIRMAN: You say the acquisition of the piece of land by the Taff Vale may in any way affect you.

SAUNDERS: Not only may, but will; they do not want a piece of land for any purpose except to make a junction.

CHAIRMAN (to Saunders): We think the promoters' counsel have a right to argue the case if you sought power to make the railway, and they will as take the land.

SAUNDERS (in reply): I shall not rest my case on the distinction between taking power to make a railway and power to take the land, but I draw your attention to this fact, that the acquisition of this land does not bring us up to Nixon's railway. We do not schedule all the land which is necessary for the purpose of making an effective junction with Nixon's railway.

It is true, we come up to Nixon's railway; we only schedule a portion of Nixon's land; we should have no compulsory powers to enable us to cross other portions of Nixon's land for the purpose of getting up to his railway. In fact if we took this land it would involve the construction of nearly half a mile of new railway over land belonging to Nixon not included under the present bill, before we got to Nixon's railway.

CHAIRMAN: You do not take compulsory powers over the intermediate land; probably you will get the land without taking compulsory powers?

SAUNDERS: There is a distinction between compulsory powers under the bill, and powers obtained by agreement; it is only in respect of compulsory powers that the Pontypridd, Caerphilly and Newport company can claim to be heard. As regards our intention to enter into an agreement with Nixon for the purpose of making a line beyond the point

where our scheduled land ends, the Pontypridd, Caerphilly and Newport company could not have anything to say to that.

BATTEN: When they have acquired compulsory powers over this piece of land they can acquire the other piece of land from Nixon and take away traffic from us.

SAUNDERS: I find there is another owner, whose land we should have to get over before we could make this railway.

SIR F. S. REILLY: Are there any other difficulties except as regards the ownership of the land in your making a line across these lands?

SAUNDERS: There are no roads. The line would not be a Parliamentary line. I will argue the case upon the supposition that the Pontypridd company were at this moment owners of the railway for which they are asking powers this Session, and had effected a junction with Nixon's railway. If under those circumstances we had scheduled a piece of land near our railway for the purposes of our railway, which the Pontypridd company did not schedule, they would acquire no right to be heard to object to our taking that piece of land, because they alleged that we intended making a junction with some other railway over that piece of land; *a fortiori*, they are not entitled to be heard when no such railway is in existence. There are already two public railways serving Nixon's colliery, the Rhymney company and our own, and his railway already has junctions with both our own lines and the Rhymney railway, and we all between us share that traffic. We could not prevent Nixon if he chose, by arrangement with the adjoining owner or upon his own land, by virtue of the general law, making a branch line for the purpose of communicating with our railway (Railways Clauses Act, 1845, sec. 76), and we shall be bound to put in junctions into our line.

SIR F. S. REILLY: If the proposed Taff Vale extension railway was made, would there then be competition between you and them?

SAUNDERS: No doubt. The extension is proposed for the purpose of competing for traffic, which we and the Rhymney company alone can take at the present time.

THE CHAIRMAN: In this case we think we cannot allow the petitioners a *locus standi*. Even assuming the Taff Vale extension to be authorised, it is only a development of existing competition.

Locus standi of Petitioners Disallowed.

Agent for Petitioners, Bell.

Agents for Bill, Sherwood & Co.

THAMES NAVIGATION BILL.

Petition of RICHARD ROBERT FAIRMAN.

19th April, 1883.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE-PALMER, M.P.; Mr. PARKER, M.P.; and Sir F. S. REILLY.)

Practice—Appearance, Delay in Entering—Disallowance of Locus Standi through Petitioner's Non-Appearance in time.

No appearance upon the petition in this case having been entered at half-past two o'clock, though the sitting of the Court began at one o'clock,

Wyatt, as agent for the bill, asked that he might be relieved from further attendance, the petitioner, though his *locus standi* was objected to, not having yet appeared.

The CHAIRMAN said that the *locus standi* would be disallowed.

At 4 o'clock the petitioner personally applied that the case should be restored to the list for hearing, stating that the appearance had not been entered under a misapprehension. He was petitioning against the bill in pursuance of authority given to him at a public meeting of bargemen, lightermen and watermen, held on March 20, and of resolutions then agreed to, which the petitioner handed in.

The CHAIRMAN said that the Court must act upon the rules governing their proceedings. The petitioner had been allowed an hour and a-half's grace, after the time appointed for the meeting of the Court, and no appearance having been entered the *locus standi* had been disallowed. At the same time, after reading the petition, it did not seem to him that the petitioner had any *locus standi*.

Locus Standi Disallowed.

TRAMWAYS PROVISIONAL ORDERS CONFIRMATION, NO. 3 (WOOLWICH AND SOUTH-EAST LONDON TRAMWAYS ORDER) BILL.

Petition of METROPOLITAN BOARD OF WORKS.

13th June, 1883.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE-PALMER, M.P.; Sir JOHN DUCKWORTH; Sir F. S. REILLY; and Mr. BONHAM-CARTER.)

Tramways, Metropolitan, Provisional Order for—Metropolitan Board of Works, consent of, to Tramway Orders—Board of Trade, Jurisdiction of, in Tramways—S. O. 22 (Consents to Tram-

way Bills), S. O. 134 (Locus Standi of Municipal Authorities and Inhabitants); and 208a, (Petitions against Bills confirming Provisional Orders)—Tramways Act, 1870—Provisional Order for Tramway, Alleged Invalidity of—Granted by Board of Trade, ultra vires—Practice—Reference of bill by House to Committee, effect of—Provisional Order, Validity of Question for House, not Committee—Distinct allegations under S. O. 134, want of.

The Tramway Act, 1870, provides (sec. 4) that the consent of the local or road authority shall be a condition precedent to the grant of Provisional Orders for making any tramway, and schedule A. defines that within the Metropolitan area the Metropolitan Board of Works shall be for the purposes of the Act both the local and road authority. The board had refused their consent to a tramway promoted within the Metropolitan area. The Provisional Order was, notwithstanding, obtained from the Board of Trade, who appear to have relied upon the promoters' statement that the Metropolitan board had no jurisdiction, and that all the necessary consents of the local and road authorities had been given. The Metropolitan board now petitioned against the confirming bill, contending that, for want of their consent, the Provisional Order was invalid *ab initio*, and producing a letter from the Board of Trade, who assumed that the question between the parties would be decided by the Committee on the bill:

Held, that, the issue raised by the petitioners being whether the grant of the Order was not *ultra vires*, this was a question to be determined not by a Committee, but by the House itself, and that the proper stage on which to have raised it was the second reading or committal of the bill: further, that the petitioners had not alleged with sufficient clearness that they would be injuriously affected by the bill under S. O. 134, and *locus standi* therefore disallowed. (Per Cur.) Committees are merely the delegates of the House, and in cases in which the House has determined to read a bill a second time, and refer it to a Committee

ation, it is their duty to act on
ce.

ndi of the Metropolitan board
because (1) no land or property
ght to be taken or interfered
are not entitled to be heard
firmation of the Provisional
ground of its invalidity, which
n of principle, ought to have
the second reading of the bill
etermined by the Committee;
Trade having thought proper to
ional Order, it is not now com-
petitioners to raise any question
before the Committee on the
question as to the competency
Trade to make the same has
sidered by the Board of Trade,
per tribunal to determine such
e promoters do not admit that
re, within the meaning and for
the Tramway Act, 1870, the
whose consent was required
sional Order was applied for or
l; (5) the petitioners allege no
of objection entitling them to

liamentary agent (for peti-
ramways now proposed to be
be situated within the metro-
by the Metropolis Management
with regard to all such tram-
l in an exceptional position.
ling Orders no bill for making
metropolis can be introduced
ent. In the case of tramways
r a Provisional Order we say
4 of the Tramways Act, 1870,
Schedule A, Part I., our consent
ority is a condition precedent,
was not given in this case.

r: Then your objection is that
Order ought never to have been
ld you not have taken that ob-
e Board of Trade?

ave always assumed that the
acted in accordance with the
; and we have never appeared
upon any of these Provisional
notice of the Board of Trade in
ever, seems to be to rely upon
gent for a list of all the local
as whose consent is a necessary
grant of the Order: and then
to prove such consent. In this
e to the Board of Trade asking
at that although we had refused

our consent to the construction of this tramway,
the Provisional Order sanctioning it had been
made by the board. Their answer explains
what occurred between them and the pro-
motors:—

“I am directed by the Board of Trade to
acknowledge the receipt of your letter of the
29th inst. with respect to the above-mentioned
Order, and to make the following reply:—
The Board of Trade require the agents in the
case of all Provisional Orders to furnish,
amongst other documents, a complete list of the
local and road authorities of the district or dis-
tricts through which the proposed tramways are
to pass. The list was duly furnished in the case of
the above-named Order; and on the proofs of
compliance with the Tramways Act, 1870, and the
rules thereunder, being given, it was proved by
the agent for the Order that the list above
referred to (which did not contain the name
of the Metropolitan Board of Works) was com-
plete, and upon the question being put to the
agents, they stated that the petitioners' Board of
Works had no jurisdiction in the matter. The
Board of Trade accordingly proceeded with the
Order, leaving the promoters to take the respon-
sibility of their statement. In a letter of
January 26 you asked whether the road autho-
rity had consented to this Order, and the Board
of Trade on the 7th of February informed you
that the promoters had proved the consent of
the Woolwich Local Board. No communication
or representation having been made to the de-
partment on the part of the Metropolitan Board
of Works, the Board of Trade assumed that they
had none to make. The Board of Trade feel
bound in all cases to accept the formal proofs
of compliance as correct; but if it should be
found that erroneous representations had been
made to them, they would take such steps as
they might consider necessary in the particular
circumstances of each case. In the present
case the jurisdiction of the Metropolitan Board
of Works has been denied by the agents for
the Order; and as the Metropolitan Board of
Works state that they are going to present a
petition against the Order, the question will be
settled by the Committee to whom the Order
may be referred. In these circumstances the
Board of Trade do not propose to take any
action in the matter.”

The Board of Trade follow the course of other
Government departments authorised to grant
Provisional Orders. If promoters, after the
formal proofs which they supply, are prepared,
upon their own responsibility and at their own
risk, to accept the Order, the department, as a
rule, grant it, leaving the opponents to raise
any objection before the Committee on the
confirming bill as to the validity of the Order
or the power of the department to grant it.
In several cases the validity of the Order has
been disputed before Committees, who have
decided, after hearing the arguments, that the
Order should not be confirmed. We wish to
raise the same question here, and to show the

Committee that the consent of the Metropolitan Board is a condition precedent without which the Order is invalid.

Sir F. S. REILLY: The bill for confirming this Order having been read a second time and referred to us by the House, can we now go behind these proceedings, and investigate both the validity of the Order and the regularity of the second reading itself?

Cripps: An issue of this kind, whether the Metropolitan Board are the local authority within the meaning of the Tramways Act, cannot properly be raised before the House of Commons upon the second reading; it is a question for evidence and argument in Committee. During the present session a Provisional Order relating to an oyster and mussel fishery at King's Lynn, was opposed before the Committee upon this same ground, and there the confirming bill had been read a second time, and referred to the Committee.

The CHAIRMAN: In a reported case of a Provisional Order, under the Artizans and Labourers Dwellings Act (2 Clifford & Rickards, 233), the Speaker's Counsel says: "We cannot go into the question of whether the preliminary requirements of the statute have been complied with. That is a matter for the Secretary of State or for the Examiner. We have to start with the bill which proposes to confirm the Provisional Order."

Sir F. S. REILLY: A case still more in point is the *Elementary Education (Provisional Order Confirmation) (London) Bill* (3 Clifford & Rickards, 151).

The CHAIRMAN: If you went before the Committee, your objection would be that the bill ought not to have been read a second time?

Sir F. S. REILLY: You would contend that, so far as this particular Order goes, this bill ought not to be in Parliament at all?

Cripps: Yes; we could not have objected to the second reading of the bill, because it includes a large number of Provisional Orders with which we are not concerned, and the practice has been to discuss these questions before Committees.

The CHAIRMAN: Do you know of any case in which the Committee have gone into the question of whether the Order was bad from the beginning?

Cripps: Before a Committee of the House of Lords the validity of a West Houghton Provisional Order was objected to on the ground that the Local Government Board, who purported to have made the Order under the Public Health Act, were not authorised by the Act to grant an Order compulsorily interfering with water rights.

The CHAIRMAN: Was not the objection this, that the Local Government Board had no jurisdiction, not that there had been a fatal preliminary objection to the application being entertained by the department?

Cripps: In whatever way the mistake had arisen, the question there was whether or not the Order was such as the Local Government Board ought to have made. We want to raise the same question in this case, namely, that the Order in this case is *ultra vires*, and that the committee should not make that valid which, as we assert, is at present invalid. The Committee will be asked to pass into an Act that which should never have come before them at all, and unless we appear, will do so without hearing our reasons why the Order is bad.

Sir F. S. REILLY: In this Session, in the case of the *Birmingham Consolidation Bill* (*supra*, 257) a petitioner objected that the poll of the ratepayers for confirming the introduction of the bill was irregularly taken, and his *locus standi* was disallowed on the ground that the bill had been read a second time, had been referred to a Committee, and that it was then too late to question the regularity of the proceedings preceding the introduction of the bill. The question there amounted to this—that the bill ought never to have been introduced.

Pembroke Stephens, Q.C. (for promoters): And in the *Kingston* case (May's Practice of Parliament, 9th Ed., p. 863), an objection on the ground of irregularity being taken, the Committee said that the question was one for the Courts of Law; and the parties objecting went to the Courts.

Cripps: These decisions seem to rest on a different basis from that involved in this case. In the Birmingham bill compliance with the terms of the statute regulating the poll was not a condition precedent to the introduction of the bill, and did not affect the right of the parties to introduce it. In the Kingston case the question arose as to the right of the promoters to introduce the bill, and they were in such a position that they could be stopped by legal proceedings from going on with it.

Sir F. S. REILLY: Your petition refers to S. O. 22; was it necessary under that S. O. for the promoters to prove your consent before the Examiner?

Cripps: No; S. O. 22 applies to private bills for tramways, but a bill for the confirmation of a Provisional Order is a public bill. The Examiner would not consider whether S. O. 22 had been complied with in the case of a bill of this kind.

Mr. BONHAM-CARTER: Does not S. O. 22 put a Provisional Order in the same position as a private bill?

Cripps : Only as to compliance with S. Orders plying to proceedings after the introduction of the bill. For instance, plans and sections are to be deposited in reference to tramways proposed to be authorised by Provisional Orders, but it is not necessary to give any proof before the examiners that the S. Orders have been complied with as regards those plans and sections because the S. Orders are not applicable to Provisional Orders. When once, however, Provisional Orders are embodied in a bill, and a confirming bill becomes subject to the rules of proceedings regulating private bills, then it is under S. O. 208a that our petition has been presented, and objections have been taken on our *locus standi*. Here the Board of Trade assume that the question will be discussed before the Committee on the bill, and they allowed the promoters to go on with the Provisional Order at their own risk believing that it would certainly be discussed there. The objection before the Committee would be whether it was expedient that the Provisional Order should be confirmed. We should contend that it was not expedient to confirm an Order which was bad *ab initio*.

Sir F. S. REILLY : You would be asking the Committee to censure a Government Department for not having properly performed their duties under the statute ?

Cripps : Hardly, because the Board of Trade merely followed in this case the course they take in all other cases ; they acted on a representation made to them that the Metropolitan Board had no jurisdiction, and let the parties who made that representation to run the risk of error in making it, assuming that the question would be dealt with by a Committee.

The CHAIRMAN : Mr. Bonham-Carter has handed me a note of a case before a Committee of the House of Commons, the *Provisional Orders Tramways (Birmingham) Confirmation Bill*, in which the preliminary objection was raised by Sir Edmund Beckett, that, inasmuch as a conditional consent had been given by the Birmingham corporation, the condition being that the tramway should be of a certain gauge, and that a clause to that effect should be in the Order, and inasmuch as the Order contained no such provision, the Board of Trade had acted *ultra vires* in granting the Order, and that such an act was contrary to the Tramways Act, 1870, which required the consent of the local authority. For the promoters, Mr. Littler replied that the Corporation of Birmingham had been summoned to the Board of Trade to settle clauses, and had attended, though all the other local authorities were present, and that the question

of gauge was determined by the Board of Trade. The Committee held that, in the case of a S. O. the question of consent was one for the Board of Trade, who must be held to have satisfied themselves on that and other preliminary matters before granting the Order.

Cripps : As the question in that case was decided by the Committee, it seems a precedent in favour of my right to go before a Committee.

The CHAIRMAN : But the Committee held the ruling of the Board of Trade to be final.

Cripps : The Committee seem to have held that, as the Board of Trade had been left to embody in the Order the conditions on which it should be granted, it was not a matter for them to discuss. The question was not, as it is here, whether the Order was invalid through the non-compliance of a condition precedent.

The CHAIRMAN : We cannot help thinking that you could have objected on second reading, not to the bill, but to the confirmation of this particular Order.

Mr. HINDE-PALMER : Or on the Order for commitment, any member might have moved that it be an instruction to the Committee on the bill to strike out this Order. There is a precedent for that mode of proceeding.

Cripps : That course would have involved an argument, partly of law, partly of fact, into which the House could hardly be expected to enter. Surely if we have any interest that would justify us in asking the House to interfere in that way, we must have an interest entitling us to go before the Committee. It is the duty of an agent to interfere with the business of the House in matters of private legislation only in rare cases, in which it is clear that there is no other remedy ; and, after consideration, we came to the conclusion that the proper course was an appeal to the Committee, especially as that course was recognised by the department responsible for this Order.

Sir F. S. REILLY : The difficulty in your way seems to be this : If you are allowed to go before the Committee, the issue raised will be whether the grant of this Provisional Order was *ultra vires*. In my judgment that is not a question for a Committee. The Committee are merely the delegates of the House. The House has determined to read this bill a second time, and refer it to a Committee whose duty it is to act on that reference. Such an objection as that which you now raise is a question not for a Committee of the House, but for the House itself.

Cripps : If we were allowed to go before the Committee, we should probably produce as a witness the officer of the Board of Trade who

is responsible for these Provisional Orders, and who would say that, under the circumstances attending the application for this particular Order, the Board of Trade were desirous that it should be struck out of the bill. Surely we are entitled to produce evidence to that effect before the Committee. If we are not, how can we raise an objection?

Mr. BONHAM-CARTER: On the third reading of the bill, you might ask the House to omit this Order.

Mr. HINDE-PALMER: Or you might move to recommit the bill, with instructions to the Committee to strike out this Order.

Sir F. S. REILLY: The question is not new to me. It has frequently been raised by Committees, who have consulted me officially, and I have always given the opinion which I have expressed now, namely, that the Committee cannot go behind the Order of the House, or refuse to deal with a bill which has been committed to them.

Cripps: That may be a perfectly sound principle where objection is taken to the whole of the bill referred to the Committee, but not where the bill includes a dozen Provisional Orders of different kinds relating to different places. I admit that on the Order for commitment, the House might have been asked to instruct the Committee on the bill to strike out this Order or deal with it in some particular way. If the Court are against me on this point,

I submit that the Metropolitan Board have a *locus standi* under S. O. 134 as a local authority injuriously affected by the bill. The petition relies upon the technical objection that the Order is *ultra vires*, and does not set out in such detail as might otherwise have been furnished our other grounds of objection to the bill. But we allege that we are the local authority; that we have declined to consent to this Provisional Order; and that, after considering the plans of the proposed tramways, we are of opinion that there is "no such public necessity for their construction as to justify the injury and inconvenience which they would cause." This allegation may not be a very clear statement of injury, and I am bound to admit that the petition was not drawn with the view of relying upon our *locus standi* under S. O. 134; but I ask the Referees to take this point into their consideration in deciding generally upon the question of our right to be heard.

Stephens was not called on to reply.

The CHAIRMAN: The petitioners do not go quite far enough to give themselves a *locus standi* under S. O. 134; there is no distinct allegation that they are injuriously affected. We think this is not the proper stage at which to take the other objection. We must therefore disallow the *locus standi*.

Locus Standi Disallowed.

Agents for Petitioners, Dyson & Co.

Agent for Promoters, Durnford.

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VOL. III., PART IV.

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PREFACE TO PART IV. OF VOL. III.

THE Reports now issued in Part IV. of Vol. III., include the CASES DECIDED BY THE COURT OF REFEREES IN PARLIAMENT during the Session 1884. Part IV. completes Vol. III. of the Series of CLIFFORD AND RICKARDS, in continuation of the Reports of CLIFFORD AND STEPHENS.

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TEMPLE, *February*, 1885.



COURT OF REFEREES IN PARLIAMENT.

REPORTS FOR THE SESSION 1884.

. Where a Standing Order is quoted or referred to, the number is that of the Standing Orders for the Session 1885.

AVONMOUTH AND SOUTH WALES JUNCTION RAILWAY BILL.

petition of (1) CHARLES WABING AND OTHERS.
11th March, 1884.—(Before Mr. PEMBERTON,
M.P., Chairman; Mr. PARKER, M.P.; Mr.
HINDE-PALMER, M.P.; Sir JOHN DUCKWORTH;
and Hon. E. CHANDOS LEIGH, Q.C.)

*Judgment Creditors and Mortgagees of Railway—
Receiver and Manager under Railway Com-
panies Act, 1867 (30 & 31 Vict., c. 127, s. 4)
—Lands of Railway taken by New Company—
Mortgagees' Security thereby Impaired—Single
Line, Power Sought to run over—Proposed
Agreements with owning Company—Judgment
Creditors and Official Managers petitioning
separately from Railway Company—Distinct
and Adverse Interests.*

A new railway was proposed by company A.,
with power to take lands belonging to com-
pany B., to form a junction with and
run over B.'s line, and enter into working
arrangements with B. For some years a
receiver and manager had, at the instance
of certain judgment creditors of B., been
appointed for that line by the Chancery
Division of the High Court under 30 & 31
Vict., c. 127, s. 4. These judgment creditors
now joined in a petition with the manager
and receiver, who appeared by special
order of the Court; the judgment creditors
alleging that their security would be im-
paired by the proposed taking of lands;
and all the petitioners concurring as to the

injury which would arise to their interests
under the powers in the bill. The promo-
ters contended that company B., who had
petitioned and to whom a limited *locus standi*
had been conceded, really represented the
interests of all parties; that, according
to practice, creditors could not appear
unless they had interests hostile to those
of the company indebted to them; and that
the representatives of creditors occupied
no better position:

Held, that the interests of the petitioners were
such as entitled them to be heard apart
from the company.

The *locus standi* of the petitioners was ob-
jected to, because (1) no land, &c., of theirs
will be taken or rights or interests affected;
(2) the petitioner R. A. Read is not entitled
to be heard either in the capacity of manager
of the railways of the Bristol Port railway
and pier company appointed by the judg-
ment creditors, or as the receiver of such
company appointed by the mortgagees; (3)
the petitioners are only interested as mort-
gagees in the undertaking of the aforesaid com-
pany, and are not in any way affected by the
bill, which (4) contains no provisions affecting
them, and (5) discloses no interest entitling
them to be heard.

Pembroke Stephens, Q.C. (for petitioners): This
is a bill incorporating a new company, with
powers to take lands belonging to the Bristol
Port railway and pier company, make a junction
with the railway (clause 5), and run over, work,
and use it (clause 44), upon terms to be settled by
agreement, or, failing agreement, by an arbitra-
tor appointed by the Board of Trade. Clause 46

will also enable the new company to enter into arrangements with the Bristol Port railway and pier company, among other companies, for "the construction, working, use, management, and maintenance, by the contracting parties, or any or either of them, of the railways and works by this Act authorized, or any part or parts thereof respectively," as well as for the regulation and interchange of traffic. Now the circumstances of the Bristol Port railway and pier company are peculiar. The company were incorporated in 1862, and subsequently obtained Acts in 1865, 1867, and 1871. The line was opened in 1867, and in 1869, on the application of certain of the mortgagees, a receiver was appointed. The Railways Companies Act, 1867 (30 & 31 Vict., c. 127) provides (sec. 4), that the rolling stock and plant of a company shall not, after their railway, or any part of it, is open for traffic, be liable to be taken in execution, "but the person who has recovered any such judgment may obtain the appointment of a receiver, and, if necessary, of a manager, of the undertaking of the company" on application to the Court of Chancery. In 1880 application was made under the statute, and the Court being satisfied that a manager was necessary, made the appointment. Subsequently, the manager was made receiver instead of the secretary of the company, who formerly acted in that capacity; and the present manager and receiver signs the petition. He is an officer of the Chancery Division, who have vested the management of the line in him; but under the powers of the bill, the management of the traffic may, in whole or in part, be transferred to the new company, or to other companies entering into agreements with them. It may be said, "Why are you not satisfied with the opposition of the Bristol Port railway and pier company?" It is true that the company have petitioned, and their *locus standi* was objected to, but there is no appearance in their case to-day.

Rees, Parliamentary agent (for promoters): An arrangement has been come to under which they are to have a *locus standi* limited to so much of clause 5 as authorizes a junction with their railway, and the taking of their lands, and also as to clause 44.

Stephens: It is remarkable that the promoters should thus recognise the interests of the company and at the same time dispute that of the officer charged with the management of this railway.

Mr. CHANDOS LEIGH: The promoters may say that the manager is little more than a receiver and the servant of the Court.

Stephens: Being the servant of the Court under the statute, the company's interest is

reduced to a nominal one; the real interest of all parties is transferred to the manager, who, under the General Act, after defraying the expenses of management, applies the whole residue of the revenue under the direction of the Court. Thus the company have nothing to do with the line. When all their debts are paid their interests would revive, but meanwhile their interests are suspended. Yet under the bill, by an arrangement between the promoters and the company, made behind the back of the official manager, the whole object of the Act of 1867, and of the orders under it made by the Court, might be frustrated. It is clear that unless the Committee on the bill hear from the manager what are the circumstances of the line, Parliament may legislate in the dark. He is charged with a statutory duty; he is the person responsible under the Court, and through whom, if at all, the railway under his control should be touched. The other petitioners are judgment creditors and mortgagees for £18,000, on which a large arrear of interest is owing; and they say they are prepared to show, along with Mr. Read, that the railway is a single line and only able to accommodate its own traffic and that of the Midland and Great Western companies; and that to authorise the use of the line by a new company, and by all other companies with whom they may agree for this purpose, upon terms not expressed in the bill, may seriously prejudice the interests of the petitioners. No doubt creditors are not generally heard apart from or in opposition to the company; but the interest of the petitioning debenture-holders here is exceptionally affected. Moreover, the bill proposes to take foreshore lands belonging to the Bristol Port railway and pier company, and these lands necessarily form part of the security of the debenture-holders.

O'Hara (in reply): The Act of Parliament under which the manager is appointed prescribes his duties, which are not to present petitions to Parliament.

Stephens: He is here under a special order of the Chancery Division.

O'Hara: Then we must look to the Act which gives the Court jurisdiction. Sec. 4 only provides that all monies received shall be applied—first, to pay working expenses, the residue being distributed under direction of the Court in payment of the company's debts; after which the Court may, if it thinks fit, discharge the receiver or manager. Creditors having no adverse interests to those of the company are not, according to practice, allowed to appear; and a manager representing creditors can stand in no better position than they do. Throughout the

only a limited *locus* has been granted. Here the proposed interference is open to serious objection. The junction will be effected in a cutting 33 feet deep, near the mouth of the tunnel, and on an incline of 1 in 100. We have found it necessary to form a sea-bank 15 feet high around the cutting in order to prevent the tunnel being flooded by high spring tides coming in with a heavy gale of wind, as happened last year. The proposed railway will cut through this sea-bank, and so leave our tunnel exposed to the Severn floods whenever they occur. Our embankment is situated at some distance from the centre line of the tunnel; it does not form part of the railway, but is in the nature of a defensive outwork to protect the line from the sea. The railway descends into the tunnel by a gradient of 1 in 200, and afterwards by 1 in 100. In the tunnel itself the level of the rails is at one point 33½ feet below the natural level outside. If, therefore, floods come through the breach, which will be made in our embankment under the bill, the whole tunnel must obviously be flooded, with the result of great damage to the traffic and injury to our property. Under these circumstances it would be a monstrous thing to say that we can be heard only on the technical question whether the promoters are to make a junction, and cannot raise the general question whether any public necessity exists to justify the risk of such a vital injury to us.

Mr. CHANDOS LEIGH: By the Railways Clauses Act, 1863, which is incorporated with the bill, it is provided (sec. 11) that "nothing relative to the junction in this Act contained shall be deemed to authorise the company for the purposes of the junction to take or enter upon any lands belonging to the company or persons to whom the other railway belongs, or to alter or interfere with any railway, or any of the works thereof, further or otherwise than is necessary for making the junction."

Pope: What the General Act gives them is the right simply to make a physical junction with the line of railway, but not to take possession of lands belonging to the company whose line they join. In this case there is not merely an interference with our rails for the purposes of a junction, but an inevitable gap made in a defensive work which we think essential for the maintenance of the Severn tunnel. Even if our *locus* were limited, as the promoters suggest, what could we say in Committee except that they must throw out the bill, which will be of no use without the junction? The promoters, therefore, will gain nothing by limiting our *locus*.

Mr. CHANDOS LEIGH: Sec. 9 of the Act of 1863 seems to contemplate cases of special interference in making junctions, and says that "in every such case all interferences with the works of the other railway, necessary or convenient for effecting the junction, shall be made under the superintendence and to the reasonable satisfaction of the engineer for the time being of the company or person to whom the other railway belongs."

Pope: The difficulty would be to say what would be "the works of the railway." Would this bank be covered by the words in the section? The bank is 50 yards away from the railway, and is as much a separate work as though it had been half a mile away. If it had been half a mile away, it would not have been a work of ours interfered with by the promoters for the purposes of a junction. Similar embankments are maintained by the London and North-Western company, as that by Rhydllyn marsh. If a company, with a view to a junction with the North-Western company, say, at Abergele, cut through the Rhydllyn embankment, this could not be called an interference with a work of the North-Western line for the purposes of a junction; still less would it be an interference entitling the North-Western company merely to a limited *locus*. Our case here rests on the same ground; and *quoad* the embankment we are entitled to a landowner's *locus*.

O'Hara (in reply): In a series of decisions upon the question of railway junctions a limited *locus* only has been allowed, though everything that could be said has been said to establish a general right. (*Waterford and New Ross, &c., Railway Bill*, 1873, 1 Clifford & Rickards, 56, where there was an interference with a crowded terminal station; *Lansdowne Road, &c., Tramway Bill*, 1879, 2 Clifford & Rickards, 177; *East and West Yorkshire Union Railway Bill*, 1882, 3 Clifford & Rickards, 142.) The petitioners' embankment is covered by sec. 11 of the General Act, for if this embankment was a work necessary for the railway, it forms part of the undertaking. The petitioners contend that the interference with this work will be such that they should have special facilities in proving how dangerous the junction will be. But they will be able to show this danger if their *locus standi* is limited; they ought not to have a *locus standi* which will enable them to question the whole policy of our undertaking. If the physical interference can be accomplished without danger, they have no right to say a word about the expediency of our scheme.

The CHAIRMAN: The Court consider that the circumstances of this case differ materially from those of the cases cited for the promoters.

Milford haven and Penarth head. As regards the pilots, they are in fact traders dealing in nautical skill and knowledge, and have to qualify by examination, and to pay for their licenses. Ninety-five out of 112 pilots at Cardiff have signed this petition. In addition to the pilots there are owners of tug-boats signing the petition. The tug owners have to be out in the channel waiting to convey vessels up the channel, and in stress of weather are liable to be driven to use this Barry sound. Then other petitioners are owners of coasting vessels who also use this harbour as a place of refuge, and may be with the others properly classed as traders. The principle laid down by this Court is that persons in business in a district, in which works requiring the sanction of Parliament are intended to be constructed, whose interests would be injuriously affected thereby, are allowed a *locus standi* if they petition as a class. In the *Thames Subway Bill*, 1866 (Smethurst, 2nd Ed., App. 131), though the pilots were refused a *locus standi* against the subway, which they alleged would obstruct the navigation of the Thames, that was because the conservators of the Thames, who had petitioned as the guardians of the navigation, had consented to a protective clause being inserted in the bill. There are no conservators to be heard in this case, and if there is any such body the objections to our *locus standi* do not raise that point. The works proposed by the bill will effectually destroy the usefulness of our harbour.

The CHAIRMAN: Assuming you are entitled to the use of it, I suppose there is no doubt that there would be such an interference as would entitle you to be heard?

Richards: We are clearly entitled to the use of it, and have used it from time immemorial.

The CHAIRMAN: I suppose the promoters will levy tolls?

Richards: They will levy tolls on vessels using the dock, which will cover a large portion of what is now open harbour, although they will not levy tolls on the small or useless portion which they leave unoccupied. We also allege in our petition as a further ground of *locus standi* that it is proposed by the bill to give to the dock-master of the intended new company, jurisdiction over all vessels and pilot boats lying out at sea within 500 yards from the south-western extremity of the entrance channel to the proposed dock. The limit to which these 500 yards will extend includes valuable anchorage ground, which is very largely used not only by the petitioners, but also by vessels of a larger size, which do not come within the channel between the island and the main-

land. This jurisdiction would enable the dock-master to marshal vessels in this channel, to send them away, and so forth. No doubt in that channel there is no water at low tide, but vessels, our own among the number, now lie on the soft mud, and go there for the purpose of being grounded.

The CHAIRMAN: It does not matter whether it is deep water or not, as regards the position of the petitioners.

Mr. CHANDOS LEIGH: In the *Mersey Docks and Harbour Board (No. 1) Bill*, 1873 (1 Clifford & Rickards, 43), masters and owners of vessels were heard on the question of harbour rates.

Pember, Q.C. (in reply): Where traders, as a class, have their trade interfered with, they have a right to be heard as a class; but, in order to entitle them to be heard, it is necessary that there should be damage essentially to their trade—an alteration of the conditions upon which they carry on their trade—and further, they must not be represented. Thus, where a railway company comes to shut up a road over a level crossing, over which mill-owners and other traders are in the habit of carrying traffic, if that road is under the control of trustees who, by petitioning or without it, have obtained clauses, those mill-owners cannot be heard unless some injury is done to a private access, in which their interest is not common with that of the rest of the public. Here the petitioners are absolutely represented, and represented twice over; for, in the first place, there is a corporation existing under Act of Parliament, called the pilotage board of Cardiff, which undoubtedly represents the pilots, and, as I should contend, represents the traders, too; and, secondly, there is the harbour department of the Board of Trade.

Vaughan Richards: I must object to this. The promoters' objections do not state that the pilots are represented.

The CHAIRMAN: The objections allege that the petitioners have no such right or interest in the harbour, as to entitle them to be heard against the bill. We think that it is open to the promoters upon that allegation to show that the petitioners are represented.

Pember: The pilotage board of Cardiff is a board constituted by Act of Parliament, and it consists of certain elected members sent by the corporation, by the Marquess of Bute as owner of the Cardiff docks, by the Taff Vale railway company, who have interests in the port, of three pilots elected by the pilots, and of ship-owners elected by the shipowners, so that the whole of the petitioners are represented by the pilotage board, who have passed a resolution in favour of the bill.

The CHAIRMAN: The pilotage board is constituted for many other purposes besides pilotage.

Pember: Then there is the harbour department of the Board of Trade, who could have vetoed this bill if they had pleased. Sec. 17 of the bill contains elaborate provisions for the protection of Barry harbour. The petitioners are simply sharers in the general public right, whatever it may be, to use the harbour.

The CHAIRMAN: They pursue their business there. The harbour department of the Board of Trade would not represent any shipping interest so far as business is concerned.

Pember: It is not part of the petitioners' trade to beach their vessels on the shallow parts of the harbour. The fact that they pursue their trade in these waters leads them to use the harbour oftener than the rest of the public, but their right to do so is precisely the same as that of the public, who are equally represented by the Board of Trade so far as interference with the foreshore is concerned. That Board have either this or last year, when the same bill was before Parliament, gone very fully into the question, and have approved of the protective clauses in the bill.

Sir JOHN DUCKWORTH: Is Barry harbour within the limits of the port of Cardiff?

Pember: Strictly speaking it is, but it cannot be called part of the harbour of Cardiff, from which place it is some 8 miles distant.

Mr. HINDE-PALMER: By clause 95 the dock-master would have power to order a pilot to remove his boat from the place to be allotted to pilot boats, if in the opinion of such dock-master it was liable to cause an obstruction; and if he did not remove his boat the dock-master might remove it.

Mr. CHANDOS LEIGH: The dock-master of a private company is to have all the jurisdiction which a harbour-master gets under the general Act. In the *Alexandra (Newport) Dock Bill*, 1882 (3 Clifford & Rickards, 122), shipowners were allowed a *locus standi* against clauses altering the jurisdiction.

Pember: Here the petitioners are not being limited in respect of any right in connection with any undertaking. The two cases are different in kind.

[The Bristol Channel Pilotage Act, 1880, was here handed in.]

The CHAIRMAN: I do not think that Act affects the position of the petitioners. The Court think that they are entitled to be heard.

Locus standi of Petitioners Allowed.

Agents for Petitioners, Radcliffes, Cator & Martineau.

Petition of (2) MARQUESS OF BUTE.

Construction of Dock and Railway—Competition with Existing Docks—Diversion of Traffic derived from same Source—Different Termini.

The bill authorised the construction of a dock and railway in connection therewith from the Rhondda Valley; and the petitioner was the owner of docks, which derived a large annual traffic from the same valley and its neighbourhood. The petitioner alleged that the proposed docks would be in direct competition with his own. It was objected that the proposed docks would be situated at a long distance (8 miles) from those of the petitioner, and that there could be no competition between traffic destined for two docks situated on an open channel at this distance from one another, although the traffic was derived from the same source. [*East and West India Dock Extension Bill*, 1882, cited and distinguished]:

Held, however, that the probable diversion of traffic was such as to entitle the petitioner to a general *locus standi* on the ground of competition.

The *locus standi* of the petitioner was objected to, because (1) no land of his will be taken or interfered with, the notice in paragraph 4 of the petition referred to having been served *ex abundanti cautela*; (2) the main ground upon which the petitioner bases his right to be heard is that the dock proposed to be made under the bill may interfere with docks in which he is interested at Cardiff, but the dock proposed by the bill will be at a distance of at least 7 miles from the docks of the petitioner, and its construction will not involve any such interference with the petitioner's docks as would entitle him to be heard against the bill on that ground or on the ground of competition; (3) with regard to the allegation in paragraph 19 of the petition, it is true that the bill of last Session, against which the petitioner was heard, was a bill for similar objects. But by that bill powers were sought to enter upon, take and use lands of the petitioner compulsorily, which necessarily conferred upon him a right to be heard against it. The present scheme does not involve the taking of, or interference with, any

and or property of the petitioner; (4) the petitioner has not and does not allege that he has any such interest in the harbour and anchorage ground mentioned in paragraph 11 of the petition, as to entitle him to be heard in respect thereof; (5) the allegations of the petition are not such as entitle the petitioner to be heard against the bill according to practice.

Bidder, Q.C. (for petitioner): The bill proposes the construction of a dock at Barry island, and a railway from the Rhondda Valley, in connection therewith, and is a similar bill to that of last year, with this exception, that the proposed railway has been so altered as not to interfere with the land of the petitioner. Although, however, he had not the same landowner's *locus standi* as last year, the Marquess of Bute, as the owner of docks at Cardiff, has a right to be heard on the ground of competition. The Bute docks were commenced in 1836, the Taff Vale railway, which is in connection with them, next followed, and the docks have been added to from time to time as occasion required. The great bulk of the coal shipped at the Bute docks comes from the Aberdare Valley (which is reached by one of the Taff Vale lines) and the Rhondda Valley. The proposal of this bill is shortly this: there are a certain number of large coal owners and workers in the Rhondda Valley, who want to do a dock business as well as a coal business, and they have combined with certain coal shippers to promote this bill for the purpose of constructing a railway to tap the Rhondda Valley up to Ystrad, and also to tap the Aberdare Valley, and bring the coal from those two valleys instead of allowing it to go to the Bute docks. The sole object of the bill is therefore direct competition with the Bute docks. As a proof of that object, last year, when this same bill was before Parliament, we extracted from the principal promoter, Mr. David Davies, in cross-examination, that the promoters had bound themselves together by an agreement, in which they pledged themselves, under heavy money penalties, that if they got their bill and made their dock, the first year they would take a third of the traffic away from the Bute docks, and the next year a half.

Pember, Q.C. (for promoters): As a matter of fact that agreement is no longer in existence, but that fact is immaterial to my argument. My position is that the diversion of every ounce of traffic from Cardiff to another port would not create such a competition as would entitle the petitioner to be heard against the bill. Barry is simply a point on the Bristol channel, to which people in the Rhondda Valley, or in the

Aberdare Valley, have as much right to send their coal as to Cardiff or to Newport. So far as the Rhondda Valley and the Aberdare Valley are concerned, they can get to Newport, they can get to Cardiff, and no doubt they would be able to get to Barry if we made our docks. But these are entirely different *termini*, and there can be no competition between traffic destined for them. The creation of a new port upon an open sea is not analogous to the creation of new docks in a river, which practically may be said to constitute one *terminus*, as in the case of the Dagenham and Tilbury docks *East and West India Docks Extension Bill, 1882* (3 Clifford & Rickards, 138). This is not competition for traffic coming to the same *terminus*, but it is the creation of another *terminus* for traffic arising at a certain point of production, say the Rhondda Valley, but destined for an entirely different place in the Bristol channel.

The CHAIRMAN: Barry is, however, within a limited distance, some 8 miles from Cardiff, and the proposed railway and dock would deal with the identical traffic that now goes to the Bute docks. We think that the Marquess of Bute is entitled to a general *locus standi*.

Locus standi of Petitioner Allowed.

Agents for Petitioner, *Grahames, Currey & Spens.*

Petition of (3) PONTYPRIDD, CAERPHILLY ~~and~~
NEWPORT RAILWAY COMPANY.

The *locus standi* of the petitioners was objected to, on the ground that no such ~~com-~~ petition would arise with them as to entitle them to be heard according to practice, the petitioners not having any substantial interest in the traffic to the Bute docks Cardiff.

Pope, Q.C., on behalf of the petitioners, ~~stated~~ that although the petition contained allegations ~~of~~ as to the diversion of traffic from the railway ~~by~~ of the petitioners by the construction of the proposed docks, he would not press that point, but would be content to accept a *locus standi* against the construction of the railways ~~only~~, as given against the *Barry Dock and Railways Bill, 1883* (3 Clifford & Rickards, 254).

Pember, Q.C., on behalf of the promoters, consented to this limitation of the *locus standi*.

Locus standi of the Pontypridd, Caerphilly and Newport Railway Company Allowed as against the railway part of the scheme.

Agent for Petitioners, *Bell.*

Petition of (4) THE RHYMNEY RAILWAY COMPANY.

Railway and Dock, Construction of—Competition—Diversion of Traffic—Statutory Agreements between Existing Railway Company and Dock Company—Annual Contribution to Docks under—Railway Company, how far interested in Docks—Right of Railway Company to be heard against Dock Scheme—Previous decision of Court reconsidered and varied.

The Rhymney railway company claimed to be heard generally against the bill, i.e., not only against the construction of railways, but also against the construction of the dock, and relied upon the decision of the Court in their favour when petitioning against the same bill in the previous Session; *Barry Dock and Railway Bill*, 1883 (3 Clifford & Rickards, 251). They urged that by virtue of a large annual contribution (£2,561), which they paid under statutory agreement to the trustees of the Bute docks, they had such an interest in those docks and the traffic there, as to entitle them to be heard against a bill authorising the construction of another dock intended directly to compete with them. On the production of the agreement, however, it appeared that the contribution referred to was in the nature of rent for land agreed to be leased to the petitioners, and it was successfully contended by counsel for the promoters that the agreement, which appeared not to have been sufficiently gone into when the case was before the Court during the previous Session, did not confer any special interest in the Bute docks upon the petitioners, beyond what a railway company with approaches to and accommodation at the docks would ordinarily possess:

Held (reversing the decision of the previous Session), that the petitioning railway company was only entitled to be heard against the part of the bill authorising the construction of railways.

The *locus standi* of the petitioners was objected to on similar grounds as those taken to be *locus standi* of (3) the Pontypridd, Caerhilly and Newport railway company (*supra*).

Bompas, Q.C. (for petitioners): The case of the Rhymney company is *res adjudicata*. The Court allowed us a general *locus standi* against the same bill and upon the same facts, last year. (*Barry Dock and Railway Bill*, 1883, 3 Clifford & Rickards, 251.) The only difference this year is that the promoters do not ask for running powers over any part of our line.

The CHAIRMAN: Last year, your argument was that you were almost a partner in the docks.

Bompas: That is the case still, and we are therefore affected by the proposal to construct docks as well as the proposal to construct railways. We allege in our petition that we have "constructed an elaborate system of sidings and other works at Cardiff for the purpose of providing sufficient accommodation for the traffic to and from the port, and have entered into various agreements with the Marquess of Bute and his trustees, and undertaken heavy obligations, in order to provide for the convenient interchange of traffic, and for the export and import of all sorts of traffic." In 1882 we entered into an agreement with Lord Bute, by which we were to pay him a rent of £2,561 in consideration of having a larger dock than the dock that was previously made. That agreement provides that the Marquess of Bute shall commence the dock, authorised by the Bute Dock Act, 1874, within two years, and complete it within seven years; and, in 1882, Parliament decided, as between all the parties, that a new dock should be made at Cardiff, and put us under statutory obligation to pay a royalty of £2,561, which we agreed to pay solely for the advantage of having all this traffic come over our line to the new docks. The proposal of the bill is to construct a new dock, which will divert the traffic, on account of which we agreed to pay this large annual sum. How can it, therefore, be said that we are not interested in the construction of the proposed dock at Barry? We shall not only be exposed to a dangerous competition from the construction of the dock, but to one which is of an unfair nature, inasmuch as, in the case of the promoters, the collieries, the railway and the dock will all be in the same hands. I pray in aid the arguments I used last year, and claim a similar *locus standi*.

Mr. CHANDOS LEIGH: You also rely, as you did last year, upon the clause in the bill, which enables the Barry dock company to enter into agreements with the Great Western and Taff Vale companies for working the proposed railway and docks?

Bompas: Yes; that clause remains as it was.

Pember, Q.C. (for promoters): The Rhymney

company have no more to say to the proposed construction of docks than the Pontypridd, Caerphilly and Newport company have. It is true the Rhymney company got a general *locus standi* against the bill last year, but their position in relation to the docks at Cardiff was not fully gone into.

The CHAIRMAN: I think one thing that weighed with us last year was the contribution which the Rhymney company pay annually to the proprietors of the Bute docks.

Pember: That arrangement does not put them in any different position from that of any other railway coming to Cardiff. The agreement, on which the petitioners rely, is an agreement scheduled to the Act of 1882, but made in 1881, and contains a number of considerations to the Rhymney company in return for the annual sum of £2,561 paid by the company to the Marquess of Bute. Amongst other considerations, there is a release to the company from a debt of £13,189.

[Agreement produced.]

The CHAIRMAN: Is not £2,561 per annum paid in consideration of this dock being made?

Pember: That does not appear. On the contrary, it appears to be paid for a lease of land, and in lieu of certain rent and royalties heretofore payable by the Rhymney company to the dock-owners. Article 7 of the agreement deals with this as follows:—"From and after the commencement of this agreement the several rents, royalties, and periodical and other sums of money payable by the company under the leasing agreements, or any of them, shall cease to be payable, and in lieu thereof the company shall pay to the dock-owners, and there shall accordingly be reserved in the lease to be granted in pursuance of the leasing agreements as hereby varied, the following rents and royalties or sums in the nature of rent (that is to say):—(a) a yearly rent or sum of £2,561 2s. 10d." The agreement then provides for a payment, subject to certain conditions, to the company of £14 for every 10,000 tons of traffic passing over the company's railway between the Taff Vale railway company's Crockherbtown junction and the proposed new dock.

The CHAIRMAN: The whole question seems to be this: Whether that agreement, or the previous agreements referred to in it, have given the Rhymney company such an interest in the Cardiff docks as entitles them to be heard against anything that would prejudicially affect those docks.

Pember: The agreement does not show that the Rhymney company have any special interest in the Bute docks. The Taff Vale company

might show a similar agreement, the Pontypridd company might show such an agreement with respect to the docks at Newport. Any railway company approaching the docks might show such an agreement. It is an agreement to have land from the landowner, who happened to be the owner of the docks, upon certain terms, and to pay certain rents for being allowed to come there. There is nothing special in it. The Rhymney company's interest does not differ in kind from the interest of ordinary carriers to the docks. Every railway company would have to pay in the same manner for their accommodation at the docks.

The CHAIRMAN: Mr. Bompas's argument last year is thus reported, and I think very fairly reported:—"In consideration of the construction of that dock we entered into onerous agreements with the Marquess of Bute and his trustees, which agreements were also sanctioned by Parliament in the last Session."

Pember: That is not an accurate statement of the facts. If the agreement was so construed by the Court last year that was done *per incuriam*.

The CHAIRMAN: Is there not a covenant in the agreement that Lord Bute will make the docks within a certain time?

Pember: If that is so, that is in consideration of the company taking more land and making more commodious approaches to the docks, but that would not make the railway company owners of docks, so as to entitle them to be heard against the construction of competitive docks.

The CHAIRMAN: We are inclined to think that we were wrong last year in giving the Rhymney company a *locus standi* against the dock as well as against the railways. We think that they are entitled to a *locus standi* against the railways. I do not think the agreement was so fully gone into last year.

Locus standi of the Rhymney Railway Company Allowed as against the construction of the railways.

Agents for Petitioners, Wyatt, Hoskins & Hooker.

Petition of (5) THE ALEXANDRA (NEWPORT AND SOUTH WALES) DOCKS AND RAILWAY COMPANY, AND THE NEWPORT (ALEXANDRA) DOCK COMPANY (LIMITED).

Docks—Competition and Diversion of Traffic—Same source of Traffic—Distinct Termini—Distance of, how far an element of Competition.

The petitioning dock companies claimed to be heard against the construction of the dock

authorized by the bill on the ground of competition. The proposed dock would be situate some 15 miles distant from the docks of the petitioners, and there were docks already existing at a port half-way between the petitioners' docks and those proposed by the bill. It was contended, however, that the proposed dock would divert traffic from those of the petitioners, the gathering ground being the same for both, although the docks forming the *termini* for such traffic were separated by so considerable a distance :

Held, that the petitioners, though their case was not a strong one, were entitled to be heard on the ground of competition.

The *locus standi* of the petitioners was objected to, because no land or property of theirs would be affected by the bill ; and, the works proposed by the bill being situated some 15 miles from Newport, no such competition with, or diversion of traffic from, the docks of the petitioners could arise as to entitle them to be heard ; nor were they in any respect sufficiently affected by the bill to entitle them to a hearing according to practice.

Pope, Q.C. (for petitioners) : Although the petitioners own both docks and railways, it is as dock-owners that they ask to be heard. If this question had arisen some years ago, when the different valleys in South Wales had their own special port of shipment, it might have been urged that Newport was, in fact, a separate port from Cardiff, or Barry, or Penarth, but now, by the authorisation of the Pontypridd, Caerphilly and Newport railway, which goes from Pontypridd over the hill to Caerphilly and joins the Brecon and Merthyr railway, so as to form a route to Newport, Cardiff, and Penarth, traffic may be brought down from the Aberdare, Merthyr, and Rhondda Valleys (which three valleys converge at Pontypridd) not only to Cardiff but to Newport. It is obvious, therefore, that Newport now has a distinct and direct interest in the traffic of the Rhondda Valley, some of which will go to Cardiff and Newport as heretofore, and some, it is proposed by the bill, will go to the Barry docks. The bill will therefore cause a diversion of traffic from our docks, and although Barry is some 15 miles from Newport, a substantial competition will arise with us for the same traffic, the test being not the situation of the two ports on the Bristol channel, but whether traffic derived from a common

source will be diverted into a fresh channel. Here we have a distinct and direct interest in traffic which is sought to be diverted by the scheme before the Court.

Pember, Q.C. (for promoters) : If you are to apply the principle of competition to this case, where is the line to be drawn ? If the proposition of the counsel for the petitioners is a sound one, you have only to start a new port on the Bristol channel anywhere, which might derive traffic from the same point of production, to constitute competition. This would reduce the argument as to competition and diversion of traffic *ad absurdum*. When the bill for the establishment of the Newport docks was brought in, Lord Bute did not seek to oppose it, nor did the Newport dock company seek to oppose the bill for a new dock at Cardiff in 1882. Unless you are going to establish what seems to me an untenable position, that whenever a port is proposed to be started for the accommodation of a great centre of production, every other port in the Kingdom that happens to accommodate that traffic from that centre of production is to have a *locus standi* against the creation of that port, there is no *locus standi* here.

The CHAIRMAN : I am not sure that the proposition is so ridiculous as it would appear at first sight. Of course a particular case might be ridiculous when you came to merits. Take a large coal producing centre in the middle of England. Have we ever decided the principle that there being an outlet to the east for that coal, there would be no competition if for the first time a railway was proposed to take it to the west ? Is not it more a question of merits than of *locus standi*, and must we not start by allowing that there is competition ?

Pember : I contend not. There is no competition in the technical sense of the word ?

The CHAIRMAN : May not we deal with the case under the general allegation that petitioners always make, that they are injuriously affected ?

Pember : That would depend on the construction to be given to the words "injuriously affected," so that it would come back to the same thing. There is a very great element of remoteness in this case. If the Alexandra docks, Newport, were the only port of shipment for the Rhondda Valley, and we came to establish a new dock, I do not even then admit that the case of competition would be made out ; but that is not the condition of things ; here you have Cardiff practically midway between Newport and the proposed docks at Barry.

The CHAIRMAN : That is one difficulty in Mr. Pope's case.

Pember : Besides the fact that the *termini* of the traffic, which is in question, will not only be distinct but far apart, instead of being the same, which is as a rule necessary in order to establish competition, it is extremely doubtful whether anything like a serious amount of Rhondda Valley traffic will ever reach the Alexandra docks at all. Newport has plenty of feeders without the Rhondda Valley.

The CHAIRMAN : Was not the object with which the Pontypridd, Caerphilly and Newport line was promoted, the carriage of coal from the Rhondda Valley to Newport ?

Pember : Not the sole object. There is plenty of local traffic upon the Pontypridd, Caerphilly and Newport railway ; and besides connecting with the Rhondda Valley it also connects with the Aberdare Valley, and also with the Rhymney. It is possible a small amount of traffic from the Rhondda Valley might go to the Alexandra docks, but considering that you have Cardiff intercepting it by the Rhymney railway and the Taff Vale railway, the chance of their getting Rhondda coal to the Alexandra docks is far too remote and far too small an element in their traffic to warrant them in having a *locus standi* against the Barry dock.

The CHAIRMAN : We think, though it is not a very strong case, we must allow the *locus standi*.

Locus Standi of the Petitioners Allowed.

Agent for Petitioners, *Bell*.

Agents for Bill, *Dyson & Co.*

BRISTOL CORPORATION DOCKS PURCHASE BILL.

Petition of HENRY T. BROWN AND OTHERS.

30th July, 1884.—(Before Mr. PEMBERTON, M.P., Chairman ; Mr. PARKER, M.P. ; the Hon. E. CHANDOS LEIGH, Q.C. ; and Mr. BONHAM-CARTER.)

Docks, Purchase of, by Corporation—Deficit, apprehended, in Rates—Ratepayers, Petitioning against Common Seal—Owners of Property joining in Petition without alleging Distinct Injury—Municipal Corporations (Borough Funds) Act, 1872 (35 & 36 Vict., c. 91)—Meeting under—Poll, Demand made for, but withdrawn—Representation of Ratepayers by Corporation thereby Assumed.

Practice—Notice of Objections, Time for Serving—Service of by Post, Sufficiency of—Petition, want of Specific Allegations in.

The corporation of Bristol promoted a bill for the purchase of docks. A petition was

presented from 6,000 ratepayers and owners of property within the city, complaining generally that the bargain was an improvident one, the docks at present yielding no profit, and that the result would be heavier rates upon the borough :

Held (1) that the petitioning ratepayers were excluded from a hearing by the doctrine of representation, a meeting having been held under the Borough Funds Act, 1872, and a demand for a poll having been withdrawn ; and (2) that the petitioning owners also had no *locus standi*, the petition containing no allegation of distinct injury to their property, and being, in fact, a ratepayers' petition. The Court stated that they did not intend to decide the question raised in argument whether owners of property, not being ratepayers or represented in a municipal corporation, have a right to oppose bills promoted by the corporation for the purchase of docks or of gas or water undertakings, on the ground of the possible reduction in rents if heavier rates became necessary to make up any deficit.

A petitioner proposing to appear on his own petition, stated to the agent for the bill that he would send an address to which any notice of objections might be forwarded. On receipt of such address, the agent at once posted the notice of objections, which did not reach the petitioner until two hours before the hearing :

Held that, under the circumstances, personal service was not necessary, and that the service by post was sufficient.

The *locus standi* of the petitioners was objected to, because (1) no lands, &c., of theirs are taken or affected ; (2) they do not allege that they will be injuriously affected ; (3) as ratepayers they cannot be heard against the common seal ; (4) as owners of property they allege no grounds distinguishing their interests from those of the general body of ratepayers ; (5) they do not claim to represent owners of property in Bristol ; (6) certain of the signatures [specified in the objections], are not genuine ; (7) the signatures were obtained by canvassers paid in proportion to the numbers appended to the petition ; (8) certain allegations relate not to the bill now pending, but to a bill withdrawn in obedience

to the wishes of the ratepayers; (9, 10, 11 and 14) the promoters deny certain allegations, but, even if true, these would not entitle the petitioners to be heard; (12) the terms of purchase were announced, and the bill was duly sanctioned by the council, owners and ratepayers under the provisions of the Municipal Borough Funds Act for the purpose of carrying into effect these terms; (13) the allegation that the bill is contrary to public expediency, even if true (which the promoters deny), does not entitle the petitioners to be heard, and so far as the allegation relates to the city of Bristol it is a complaint against existing legislation; (15) no grounds are alleged which, according to practice, entitle the petitioners to be heard.

Brown, Solicitor (for himself and co-petitioners), raised the preliminary objection that he had only received the notice of objection within the last two hours.

Coates, Parliamentary agent (for bill), explained that Mr. Brown, on leaving London, promised to send an address to which the notice of objections might be forwarded, and on receiving this address (at Eastbourne) a copy of the notice was at once sent there, and also to Mr. Brown's address at Bristol given in the petition.

The CHAIRMAN (to petitioner): The notice was sent to the address you gave?

Brown: Service by post is not sufficient. As to the service at Bristol, I now have no office there.

The CHAIRMAN: Did the letter and notice of objections addressed to Eastbourne reach Mr. Brown within less than eight days after the petition was lodged?

Pope, Q.C. (for bill): Yes.

The CHAIRMAN: I think that is quite sufficient service.

Brown: The bill is one "to enable the mayor, aldermen and burgesses of the city of Bristol to purchase the undertakings of the Bristol port and channel dock company, and the Bristol and channel dock warehouse company, limited, and the dock undertakings of the Bristol and Portishead pier and railway company, and for other purposes." The petition is signed by 6,000 ratepayers and owners of property who are not ratepayers. I am not a ratepayer but own property in Bristol, and the grounds on which we, as owners, appear here, is the fear that our rents will be reduced through the heavy rates which may be necessary if the bill passes. We, therefore, shall be the persons who will really bear the burden of increased taxation. In 1871, in the case of the *Bristol Port and Channel Bill*, promoted, amongst other parties, by the corporation of Bristol, owners of property in that city, not

being municipal electors, were allowed a hearing (2 Clifford & Stephens, 121). Similar decisions have been come to in other cases. (*Chesterfield Borough Improvement and Extension Bill*, 1876, 1 Clifford & Rickards, 211; *Huddersfield Water and Improvement Bill*, *Ib.* 230.)

The CHAIRMAN: The ground of decision in the last case was that a new rate was for the first time proposed, whereas owners within the municipal limits were not represented.

Pope: What the petitioner alleges is that the proposed expenditure in buying the docks may increase the rates. There is no power in the bill to levy any new rate.

Brown: The purchase of these docks will cost nearly a million. They have never yet yielded any profit, and owners of property and ratepayers will not only have to pay the interest on this million, but will have to keep the docks in repair.

The CHAIRMAN: Has there been a meeting under the Borough Funds Act?

Brown: Yes, I attended the meeting and demanded a poll, but was induced to withdraw the demand, reserving my rights.

The CHAIRMAN: We must assume that the meeting was properly held, and that the resolution sanctioning the bill was properly passed.

Brown: In support of our *locus standi* as ratepayers, I refer to the following cases:—*Northampton Corporation Bill*, 1870 (2 Clifford & Stephens, 6); *Govan Burgh Bill*, 1878 (2 Clifford & Rickards, 98); *Lancaster Corporation Bill*, 1880 (*Ib.* 263); *Edmonton Local Board Bill*, 1881 (3 Clifford & Rickards, 43); *St. Helen's Borough Improvement Bill*, 1869 (1 Clifford & Stephens, 52); *Sligo Borough Improvement Bill*, 1868 (*Ib.* 56). On the whole the cases show that corporations do not necessarily represent either owners or ratepayers.

The CHAIRMAN: We are satisfied that the corporation represent the ratepayers here, by reason of the meeting under the Borough Funds Act.

Pope (in reply): The poll which may be demanded under the Borough Funds Act is the legislative mode of ascertaining the opinion of the ratepayers if they are not unanimous; and Mr. Brown withdrew his demand for a poll.

The CHAIRMAN: The question then is, whether owners of property, who may be injuriously affected if heavier rates are levied upon their property, although not themselves ratepayers, have a right to be heard independently of the corporation.

Pope: That is to say, on the ground that their property may be diminished in value. I have not been able to find any case which goes that length. But the petition contains no allegation upon which such a contention can arise. All

the petitioners say is, that they disapprove of the bargain which the corporation have made with respect to the docks, because they believe it will be an improvident bargain. There is nothing to show that the petitioning owners have any rights which would be affected apart from the interests of ratepayers. No doubt in general terms it is a petition from ratepayers and owners; but in the petition itself no distinction is made between their respective interests, nor is there any allegation that owners are differently affected from ratepayers. It is not therefore necessary for me to argue that the separate interests of owners in this case would not give a *locus*, for no such separate interest is set up; the whole scope of the petition shows that it is one which is covered by the ordinary doctrine of representation. The Court has never laid down the doctrine that if a corporation buys gas or water works, all owners of property may oppose the bill for that purpose on the ground of the liability of the borough fund or rates to make up any deficit.

The CHAIRMAN: There is the case of the *Edinburgh Municipal Bill*, 1879 (2 Clifford & Rickards, 149).

Pope: That was a case of new taxation, or an alteration of old taxation, and the petitioner there complained specifically, as the petitioners here do not, of a change in the incidence of taxation, and of consequent depreciation in the value of his property.

The CHAIRMAN: In this petition there seems to be no allegation of any injurious affecting of owners. The only approach to it is the allegation "that the ratepayers and owners of property in the said city will never authorise such additional taxation, which would be ruinous to the citizens."

Pope: There is no allegation whatever that the value of property belonging to any of the petitioners would be diminished by reason of increased taxation.

The CHAIRMAN: We cannot allow a *locus standi* in this case. We think the petition does not raise any separate question of ownership; it is really a ratepayers' petition only.

Pope: You do not say what you might or might not decide in a case where there was the allegation as to ownership which is wanting here?

The CHAIRMAN: No.

Locus standi Disallowed.

Agents for Bill, Dyson & Co.

CARDIFF AND MONMOUTHSHIRE VALLEYS RAILWAY BILL.

Petition of THE ALEXANDRA (NEWPORT AND SOUTH WALES) DOCKS AND RAILWAY COMPANY, AND THE NEWPORT (ALEXANDRA) DOCK COMPANY (LIMITED).

1st April, 1884.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE-PALMER, M.P.; Mr. PARKER, M.P.; Sir JOHN DUCKWORTH; Hon. E. CHANDOS LEIGH, Q.C.; and Mr. BONHAM-CARTER.)

*Competition between Docks and Railways—
Diversification of Traffic—Tunnel uniting different
Valleys—Improvement of Existing Competition.*

The bill proposed the construction of a railway which would form a connection by means of a tunnel between two Monmouthshire Valleys, as well as between certain existing railways which converged upon Newport, where the docks of the petitioners were situated. The petitioners contended that the result would be the diversion of traffic from their docks at Newport to the port of Cardiff, and claimed to be heard on the ground of competition. It was urged, *contra*, that there would, at most, be an improvement of existing competition, as a portion of the traffic from the Monmouthshire Valleys already found its way to Cardiff over existing railways. The question was raised, whether there could be such a competition between docks and railways as to form the basis of a *locus standi*. The Court, however, declined to give a decision on this point, but refused a *locus standi* to the petitioners, on the ground that the result of the bill would only be to improve existing competition.

The *locus standi* of the petitioners was objected to, because (1) no such competition with the promoters will result from the bill as to entitle them to be heard; (2) no competition will be created under the bill, as a great quantity of the mineral produce from the Sirhowy and Monmouthshire Valleys already passes over the existing railway communication between Risca and Cardiff mentioned in the bill, and the proposed railways will merely facilitate this traffic;

(3) the petitioners, the Alexandra (Newport and South Wales) docks and railway company have no power to use or work their railways, except for the immediate purposes of their docks; (4) the bill contains no provisions for taking or using any of the lands, stations, or railway accommodations of the petitioners; (5) the petitioners are not entitled to be heard on questions of capital, estimates, or engineering details; (6 and 7) the petition does not allege that any property or interests of the petitioners will be affected by the bill in such a manner as to entitle them to be heard.

Pope, Q.C. (for petitioners) : The bill proposes to authorise the construction of railways running over the Rhymney railway near Caerphilly to Nine Mile point on the Sirhowy Valley railway, then running farther on and joining the Monmouthshire Western Valleys line of the Great Western near Risca, and also joining the Brecon and Merthyr, near Machen. The Monmouthshire Western Valleys line, the Brecon and Merthyr, and the line by Nine Mile point all converge upon Newport, and unless there was a line connecting the Monmouthshire Western Valleys and the Sirhowy Valley, such as this Cardiff and Monmouthshire, all the traffic of those valleys must go to Newport and feed our docks. Between Nine Mile point and Caerphilly there is at present a high range of mountains which it is proposed to tunnel through, so that the object of the line obviously is to take the traffic of the Monmouthshire and Sirhowy Valleys to Cardiff, whereas at present it is obliged to go to Newport. No doubt, when the traffic reaches Newport, there is a physical possibility of its being taken to Cardiff along the South Wales line, but if any traffic does go to Cardiff that way it is obvious that it must be a very inconvenient route.

Lewis (for promoters) : I know of no case in which a dock pure and simple has been heard against a railway. The undertakings are different in every respect, their objects and purposes are different, and they are carried on by different means and appliances. How then can there be competition between two such undertakings? The object of our bill is to effect a communication between the Monmouthshire Valleys and Cardiff. The petitioners base their right to be heard upon competition and diversion of traffic.

The CHAIRMAN : What they complain of is abstraction of traffic.

Lewis : Granting there is abstraction of traffic, that abstraction of traffic is not from the petitioners. They have small railways or sidings which are auxiliary to their docks, but they are primarily dock-owners, and any diversion of traffic that there might be, would not be

from their dock, but from the Great Western, and everything that can be urged against that diversion will be urged by the Great Western railway company who have an undisputed *locus standi*. There may also be a diversion of traffic from the London and North-Western railway who have petitioned, and whose *locus standi* is not disputed. The interest of the Newport docks in traffic coming past Risca and Bassalleg is only a limited interest. The Great Western company do not deliver all the traffic from Risca to the Newport docks, but a small portion of it passes to the east to London, and another portion goes to the west to Cardiff; another, and no doubt the largest portion, going to Newport. Then further, I submit, that we are not creating a new competition; we are simply rendering more effective existing competition, because a large quantity of traffic is carried by the Great Western to Bassalleg, and thence by the South Wales line of the Great Western to Cardiff. There is now competition between Cardiff and Newport for the traffic of these Monmouthshire Valleys. A certain portion of the traffic of the Sirhowy Valley and of the Monmouthshire Western Valley is brought down to Risca, it being brought down the Tredegar Valley by the London and North-Western, and down the Monmouthshire Western Valley by the Great Western. After getting to Risca it passes to a point just below Bassalleg, where it gets on to the line of the Great Western, and then goes west to Cardiff, that route from Risca being about 26 miles, whereas by the proposed line and by the Rhymney railway the distance would be about 18 miles; therefore there would be a saving of about 8 miles to coal-freighters and iron masters in those two valleys in comparison with the present route of the Great Western.

The CHAIRMAN : We are disinclined to settle the abstract question whether a dock has a right to be heard against a railway, but we must disallow the *locus standi* on the ground that this is merely an improvement of existing competition.

Locus standi Disallowed.

Agent for Petitioners, *Bell*.

Agents for Bill, *Torr & Co.*

CARDIFF CORPORATION BILL.

Petition of (1) MERTHYR TYDFIL BOARD OF HEALTH.

14th March, 1884.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. PARKER, M.P.; Sir JOHN DUCKWORTH; and Hon. E. CHANDOS LEIGH, Q.C.)

Water Supply, interference with—Water-shed, of Town, invaded by Adjoining Municipality—Reservoirs, damage from—Waterworks Clauses Act, 1863—S. O. 134 (Municipal Authorities and Inhabitants)—S. O. 134a (Local Authorities Petitioning against Lighting and Water Bills), effect of—Locus standi, absolute Right of Petitioners to, under S. O. 134a.

A bill promoted by the corporation of Cardiff for taking a water supply from a branch of the river Taff, 30 miles from their own borough, was opposed by the local board of Merthyr Tydfil, lying between the proposed gathering ground and the borough of Cardiff. The petitioners drew their own water supply from a different branch of the river Taff, but complained, in effect, of invasion of the district, of possible danger from the new reservoirs, and of their territory being traversed *en route* by the pipes of the promoters. A *locus standi*, limited to the protection of any property in Merthyr Tydfil which might be interfered with, was offered and refused. Neither the petition nor the notices of objection called special attention to S. O. 134 or 134a, which were nevertheless much discussed and contrasted during the arguments addressed to the Court. Paragraph 5 of the petition alleged generally that the district was "injuriously affected by the bill for the reasons herein appearing," and this paragraph was not traversed in the objections, although the subsequent paragraphs of the petition were dealt with in detail. As to the allegation of danger from the proposed reservoirs, the promoters pointed out that the Waterworks Clauses Act, 1863, was incorporated in the bill, and urged generally that they were not interfering with the source of the petitioners' supply. The latter rejoined that they might require to use this branch of the river also at some future date, and

meanwhile that the river, as a whole, flowed through their town :

Held, that the petitioners were entitled to a general *locus standi*.

(*Semble.*) That in the view of the Court the words "relating to gas or water supply" in S. O. 134a may be regarded as equivalent to "affecting" the gas or water supply of the town represented by the petitioning local authority, and it is immaterial to what particular district the supply relates, as long as injurious consequences may reasonably be apprehended under the provisions of the bill to the supply of another district.

The *locus standi* of the Merthyr Tydfil local board of health was objected to, because (1) no land or property of theirs is or can be taken under the bill; (2) their property in the streets is not such an ownership in the soil as entitles them to be heard generally against the bill; (3) the promoters admit the petitioners' claim to appear, limited to the insertion of clauses protective of their water mains, sewers, roads, &c.; (4) the Waterworks Clauses Act, 1863, which contains the special clauses as to security of reservoirs, is incorporated with the bill, and the petitioners have no right to be heard upon their allegations as to the proposed reservoirs and embankments; (5) the petitioners allege no right or interest entitling them to be heard according to practice.

Ledgard, Q.C. (for Merthyr Tydfil local board): The bill is one which, among other objects, enables the corporation of Cardiff to obtain a supply of water from the river Taff Vawr, in Breconshire. We are the urban sanitary authority for the district of Merthyr Tydfil, which has a population of about 50,000; and by a local Act of 1858 and other Acts we are empowered and required to supply, and we do supply, water to this district. We have also acquired some 400 acres of land for the disposal of the sewage not only of Merthyr Tydfil but of Aberdare and Mountain Ash, two local board districts in the county of Glamorgan, and for this purpose have constructed about 20 miles of main sewers and seven miles of sewage carrier. In collecting and diverting for their use the waters of the river Taff Vawr and its tributaries, the promoters purpose to construct three reservoirs and relieving tanks and conduits extending for a distance of upwards of 30 miles, in the counties of Brecon and Glamorgan. These works will be situate within our district and within districts traversed by our water

mains and sewage carriers, which will be injuriously interfered with and affected. The promoters also seek to come outside the limits of their own natural water-shed and appropriate that of the Taff Vawr valley, which is the natural water-shed of our district. We say we are prepared to show that the water of the Vawr river and its tributaries is required for the necessities of the inhabitants of our district, and that we therefore wholly object to any interference with it. We also allege that the proposed reservoirs will be a source of danger to the populous district of the valley of the river Taff, which lies just below the site of these reservoirs.

The CHAIRMAN: Do you claim a *locus standi* under S. O. 134a?

Ledgard: Our petition is within both S. O. 134 and 134a.

The CHAIRMAN: S. O. 134 gives us a discretion to admit local authorities or inhabitants who allege that they will be injuriously affected by a bill. S. O. 134a says that local authorities alleging that their town or district "may be injuriously affected by the provisions of any bill relating to the lighting or water supply thereof, or the raising of capital for any such purpose, shall be entitled to be heard against such bill." S. O. 134a therefore appears to give an absolute right, and the petitioners had better deal with their *locus standi* under it, as, if they establish this right, we shall be relieved from the necessity of exercising any discretion under S. O. 134.

Pembroke Stephens, Q.C. (for promoters): The bill against which the local authority of any town or district appear under S. O. 134a must be a "bill relating to the lighting or water supply thereof," that is to say, of the district of such local authority.

Ledgard: The objection is that this is a bill relating to the water supply, not of our district, but of another district. But in obtaining a supply for that other district, the bill injures the supply of our district, and we are therefore within S. O. 134a, the common-sense construction of which is that if a bill will deprive a town or district of part of its water supply, the local authority so affected must be heard. Merthyr Tydfil is situated on the Taff Vawr, from which we take our water supply. The promoters propose to feed one of their reservoirs from a tributary of the Taff Vawr running into that stream just above Merthyr. We say that in the future we shall want an increased supply; that the promoters are seeking to appropriate the only water-shed left to us; and that their works will also diminish the flow of water on which we now rely. Against the Wakefield Water Bill, 1874, the

Corporations of Doncaster and Sheffield were allowed a general *locus standi*, though their case was a weaker one than ours, Sheffield being twelve miles, and Doncaster thirty-two miles from the point of abstraction (1 Clifford & Rickards, 122). Here Cardiff is far removed from our water-shed while we are close to it.

The CHAIRMAN: The main question is, what is the proper interpretation of the word "relating" in S. O. 134a? If, instead of the words "relating to the lighting or water supply thereof," the S. O. said, "the provisions of any bill affecting the lighting or water supply thereof," there could have been no question that it would have applied to a case like this, where the bill itself does not relate to the supply of the district of the petitioning authority.

Ledgard: The S. O. may be read as meaning that any local authority has a *locus standi* against a water bill, if the bill injuriously affects the supply of its own district. It could hardly have meant that local authorities were only to be heard against bills for the supply of their own district.

The CHAIRMAN: You would say that a bill relates to the water supply of a town if it affects that supply?

Stephens (in reply): The words in S. O. 134a "relating to the lighting or water supply thereof," must mean the lighting or water supply of the petitioning authority, such bill being brought in by some body or persons other than the local authority.

The CHAIRMAN: Ought we not to interpret liberally the two Standing Orders? It may have been the intention of those who framed them that, whereas under S. O. 134 local authorities or inhabitants might or might not have a *locus standi* against the bill upon allegations that it injuriously affected a town or district, under S. O. 134a local authorities should be absolutely entitled to a *locus standi* upon the same allegations when it was a water or gas bill.

Stephens: Parliament did not repeal or alter the old S. O., but left it intact, adding a new one for a new purpose. S. O. 134a cannot mean that local authorities have an absolute right of appearing against a gas bill operating outside their district. The S. O. was passed in 1881 to cure a particular mischief. You will find its origin in the case of the *Fylde Water Bill*, 1881, *Petition of Corporation of Blackpool* (3 Clifford & Rickards, 54). The views of the Court upon the S. O. are also set forth in the case of the *Birmingham Consolidation Bill*, 1883 (3 Clifford & Rickards, 257), and do not support the position taken in this case. If, moreover, the petitioners wanted to get the benefit of S. O. 134a, it was not enough for

them to say that they would be injuriously affected by the bill; they should have alleged in the terms of the S. O. that their district would be "injuriously affected by the provisions of a bill relating to the water supply thereof." As to the alleged interference with water pipes and sewers, we concede to the petitioners a limited *locus standi*.

The CHAIRMAN: I am rather inclined to think that the word "relating" can be read "affecting" in S. O. 134a; but as the construction of that S. O. has been questioned, the Court would like to hear the matter argued under S. O. 134 as well.

Ledgard: The question of danger is one of merits, and not to be met by an off-hand reference to sections of the Waterworks Clauses Act, 1863. But, in any case, the promoters have not denied our allegation that we are "injuriously affected."

Stephens: The petitioners allege that they "are injuriously affected by the bill, and object thereto for the reasons herein appearing." In challenging the grounds for this statement, we take away the platform on which it rests. There is a chain of hills between the two water-sheds, so that the supposed extension of the Merthyr Tydfil works in competition with ours is impracticable. Possible future injury is not a ground of *locus standi*.

The CHAIRMAN: We think that the petitioners are entitled to a general *locus standi*.

Locus standi Allowed.

Agent for Petitioners, *Rees*.

Petition of (2) RATEPAYERS AND INHABITANTS OF CARDIFF.

Ratepayers—Representation by Corporation—Inhabitants, Right of, to Oppose Municipal Bill—Municipal Corporations (Borough Funds) Act, 1872, Meeting under—S. O. 134 (Local Authorities and Inhabitants)—Representation of Inhabitants, by Petitioners—S. O. 173A (Committee to consider matters affecting Local Government).

A petition against certain police clauses in an improvement bill promoted by the Corporation of Cardiff was signed by fifteen ratepayers and inhabitants. The bill had been sanctioned at a public meeting held under the Municipal Borough Funds Act, 1872. It was admitted that, as ratepayers, the petitioners could not be heard against the corporation, but they claimed a *locus standi* as inhabitants under S. O. 134:

Held, that the petitioners had not a sufficiently representative character to be heard as inhabitants.

The *locus standi* of the ratepayers and inhabitants of Cardiff was objected to, because (1) no property of theirs will be affected; (2) if they claim to be heard as ratepayers they cannot be heard against a bill promoted by the corporation; (3) if as inhabitants they do not claim to represent the inhabitants either in number, rateable value, or amount of property; (4) the bill is promoted by the corporation with the consent of the owners and ratepayers of Cardiff at a public meeting called under the Municipal Corporations (Borough Funds), Act 1872; (5) the petition does not emanate from a public meeting; (6) it discloses no ground entitling the petitioners to be heard according to practice.

Rowlands, Q.C. (for petitioners): We object to clauses 50-2 of the bill, under the head of "Police," submitting that although it is desirable to repress immorality, it is quite unnecessary to recur to measures of the exceptional character now proposed, and that the existing laws are adequate for the suppression of disorderly houses. This bill has been referred not to the usual Private Bill Committee, but to a Committee of seven members, and petitions against it therefore stand in a somewhat exceptional position.

The CHAIRMAN: This bill has been referred by the House to a Committee who are to consider "all private bills promoted by municipal or other local authorities by which it is proposed to create powers relating to police or sanitary regulations which deviate from, or are in extension of, or repugnant to, the general law;" and S. O. 173a (as to improvement bills ~~which~~ ^{it} police or sanitary clauses), is to be applicable to the Committee. There is therefore no Order referring petitions to the Committee, and we shall have to deal with the *locus standi* of the petitioners.

Rowlands: As ratepayers the petitioners probably cannot be heard against the act of their corporation, but we claim a *locus standi* as inhabitants under S. O. 134. The only question is whether we are a sufficiently representative body.

The CHAIRMAN: We decided the other day (*post*, p. 442) that 473 petitioners did not sufficiently represent the inhabitants of Milford. I am afraid we must disallow your *locus standi* as far as this Court is concerned.

Locus standi Disallowed.

Agents for Petitioners, *Darley & Cumberland*.

Agents for Bill, *Dyson & Co.*

CORK BUTTER MARKET BILL.

Petition of (1) JOSEPH BENNETT AND JOHN EGAN; (2) EXPORTERS OF BUTTER FROM THE CITY AND PORT OF CORK; (3) COMMITTEE OF MERCHANTS OF THE CITY OF CORK.

4th April, 1884.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE-PALMER, M.P.; Mr. PARKER, M.P.; Sir JOHN DUCKWORTH; Hon. E. CHANDOS LEIGH, Q.C.; and Mr. BONHAM-CARTER.)

Practice—Arbitration—Bill to Carry out Award—Clauses embodying Terms—Petition against Alterations—Form of Order of Court—General Locus Granted, Subject to Understanding between Parties.

The bill was one for giving statutory effect to the award of an arbitrator, which was embodied in the clauses of the bill. The petitioners asked to go before the Committee in order to see that the clauses correctly carried out the terms of the award, and their petition was therefore not directed against the bill, but was in effect a petition against alterations, and to procure the correct embodiment of the award. A difficulty arose as to the terms and limitation of the petitioners' *locus standi*, as the award was not referred to in any part of the bill. After discussion, the Court allowed the *locus standi* of the petitioners generally, on an understanding being come to between the petitioners and promoters, that the former should not use their *locus standi* to oppose the preamble of the bill, but only in order to see that the clauses of the bill carried out satisfactorily the terms of the award.

Walmisley, Parliamentary agent (for petitioners): Petition (1) is withdrawn. Petitioners (2) and (3) ask to be allowed to go before the Committee, in order to see that the clauses inserted in the bill are in accordance with an award of Lord Fitzgerald on 6th March ult.

Mr. CHANDOS LEIGH: Your petition is really against alterations?

Walmisley: That is so. We have not yet had an opportunity of examining the clauses in detail; probably they will be found satisfactory, and the bill will become unopposed.

The CHAIRMAN: There may be some difficulty about the order. If we allow a *locus standi* against all the clauses, that is really against all the bill. If we report that the *locus standi* is allowed generally, would the promoters be satisfied if the petitioners came to an arrangement with them that the *locus standi* should not be used further than to see that the clauses are in conformity with Lord Fitzgerald's award?

Greig (for promoters): Could not the order of *locus standi* be drawn in that form?

The CHAIRMAN: The award not being referred to in the bill, we cannot frame the order by reference to any part of the bill. We must report *locus standi* allowed or disallowed, and in this case it seems to me that we must allow the *locus standi* generally. It is understood, however, that the *locus standi* is not to enable the petitioners to oppose the preamble of the bill.

Mr. CHANDOS LEIGH: That will appear on the shorthand writer's notes, and the petitioners will not be able to appear in a hostile spirit to the bill.

[*Greig* and *Walmisley* assented to this arrangement.]

Locus standi of Exporters of Butter from the City and Port of Cork, *Allowed*.

Locus standi of Committee of Merchants of the City of Cork, *Allowed*.

Agents for Petitioners (1), *Batten & Co.*

Agent for Petitioners (2 and 3), *Walmisley*.

Agents for Bill, *Holmes & Co.*

CROYDON CORPORATION BILL.

Petition of (1) THE COMPANY OF PROPRIETORS OF THE LAMBETH WATERWORKS.

14th March, 1884.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. PARKER, M.P.; Sir JOHN DUCKWORTH; and the Hon. E. CHANDOS LEIGH, Q.C.)

Water Supply by Company, and also by Corporation, within Company's Statutory Limits—Bill for Defining and Extending Limits of Corporation Supply—Two Mile Radius—Licensed Extensions—Construction of Waterworks—Competition—Invasion of District—Alteration of General Law—Public Health Act, 1875, s. 52, How far Applicable.

The bill authorised the corporation of Croydon as the local authority to construct waterworks,

and supply their borough with water. The borough was within the limits of supply of the petitioning water company, but it appeared that owing to the inability of the water company, shortly after its incorporation, to supply this district, the urban sanitary authority of Croydon (at that time not created a borough) had constructed waterworks, and further that both the corporation and the petitioning water company were at the present time supplying part of the district, which it was proposed by the bill to give the corporation special statutory power to supply. The petitioners complained that the bill would enable the promoters to supply the borough in competition with themselves, and amounted to an invasion of their district, and also that the bill was in contravention of the general law as to water supply by a local authority in a district which an existing water company was empowered to supply, (Public Health Act, 1875, s. 52). The promoters contended that the bill would, at the utmost, render more effective an existing competition between themselves and the water company in a district already supplied both by themselves and the petitioners, and therefore afforded no ground for a *locus standi*:

Held, however, apparently on the ground of competition, that the petitioners were entitled to be heard generally.

The *locus standi* of the petitioners was objected to, because (1) the petitioners do not allege in their petition, nor is it the fact, that any lands or property belonging to them are proposed to be taken or interfered with under the powers of the bill; (2) the petition, from paragraph 1 to 10 inclusive, contains only recitals; (3) by paragraph 11, the petitioners admit that in consequence of the non-exercise of the powers entrusted to them by Parliament, the inhabitants of Croydon were obliged to construct works at a considerable cost to supply themselves with water; (4) the promoters of the bill only seek power to enlarge their existing works and to improve the supply of water within the borough, which, if the allegation contained in paragraph 17 of the petition be true (which the promoters deny), is abundantly proved to be necessary, and it is submitted that

the petitioners have no right to be heard against that portion of the bill which they themselves practically allege to be necessary; (5) there is nothing in the petitioners' Acts of Parliament giving them a monopoly over the vast district which they are authorised to supply with water, portions of which have never been supplied, to the prejudice of the inhabitants of such portions, and the promoters submit that the enlargement of their works and the supply of water to the whole of the inhabitants of the borough will not authorise such a competition with the petitioners as will entitle them to be heard against the water powers sought by the bill; (6) if the 52nd section of the Public Health Act, 1875, were applicable to the corporation of Croydon (which the promoters deny), it will be seen (paragraph 11) that the company had waived their rights under the Public Health Act, 1848, which contained a similar provision to that of the Public Health Act, 1875; (7) the promoters do not seek by the bill to repeal any of the powers of the petitioners, nor to interfere with their present power of supply; (8) the petitioners disclose no ground for a hearing according to practice.

Michael, Q.C. (for petitioners): Section 7 of the bill empowers the corporation of Croydon to construct waterworks and do all things necessary thereto, such as constructing reservoirs and aqueducts, laying pipes, and so forth; and section 11 of the bill provides "The limits of this Act for the supply of water shall comprise and include the borough: provided always that the corporation may supply water in bulk to sanitary, local, and other authorities, public bodies, and persons without the borough, as in this Act provided." This section is explained and amplified by section 32: "The Corporation when supplying water under the authority of this Act may from time to time agree with any sanitary, local, or other authority, public body, or person for the supply of water by the corporation to that authority, body, or person, in bulk or otherwise, for public, sanitary, private, or other purposes, and may from time to time vary, suspend, or rescind any such agreement:" with this proviso, that the corporation is not to give such supply "so as to interfere with a proper supply of water for all purposes within the borough." These provisions are an enlargement of the Public Health Act, 1875, which only provides for a supply in bulk by a local authority to any adjoining sanitary authority, and it affects our position as the existing body for the supply of water. The limits of supply of the Lambeth waterworks company include the borough of Croydon, and the bill authorises the corporation to

ater in our district in contravention of
ision contained in section 52 of the
ealth Act, 1875, which requires a local
to give notice that a supply of water
ed to every existing water company
heir district, and also proof of the
such company are not able and willing
ach supply.

HAIRMAN: Would you not be entitled
as *standi* according to our practice on
question of competition?

l: Yes, and the petition alleges that
will expose us to a direct and in-
ompetition, but that is not all. This
empt to interfere with the general
o water supply. In 1848 the company
powers for the supply of the district;
a letter was written by the then urban
authority of Croydon asking the com-
whether they were able and willing to
water within a circle of two miles
centre of the then existing district.
time the works of the company were
iently completed to comply with this
and no answer was therefore given to
er, whereupon the urban sanitary
proceeded to construct works and
ater within the two mile radius. This
beth company have allowed, not wish-
interfere with Croydon, although the
supply water within the two mile
so, and since then the company have
a Croydon sanitary authority license
certain extensions of their mains.
don corporation now seek to extend
its of supply still further, within which
limits we not only supply water but
reservoirs. The case is a clear case
on of district and competition, and also
on of the general law in the past, and
of it by the present bill.

d, Q.C. (for promoters): The whole case
itioners rests upon competition; and
point comes to this, whether we, who are
n possession of waterworks within a
istrict, which I admit is limited to a
radius, now that we are proposing to
at district a short distance further, so
lude the whole of our borough, will
ach a competition with the Lambeth
mpany as to entitle them to be heard.
ioners have no right to raise the ques-
ther we are doing something in con-
n of a public statute, although, as a
f fact, I submit that we are not doing
s is not the state of things intended to
with by sec. 52 of the Public Health
5, inasmuch as we are already supply-
r from our own waterworks in competi-

tion with the Lambeth waterworks not only
within the two-mile radius, but within the dis-
trict which we seek now to include within our
limits for the first time. The bill only makes
our competition more effective than before, and
that is no ground for a hearing according to the
practice of the Court.

The CHAIRMAN: We think the Lambeth
Waterworks Company is entitled to a general
locus standi.

Locus standi of Petitioners, Allowed.

Agents for Petitioners, Bell, Steward &
Steward.

Petition of (2) OWNERS, LESSEES, AND
OCCUPIERS OF MILLS AND OTHER PROPERTY ON
THE RIVER WANDLE.

*Construction of Waterworks—Sinking of Wells—
Underground Streams feeding River, Abstrac-
tion of—Underground water flowing in De-
fined Channels—Riparian Owners—Chasemore
v. Richards (H. L. C., 349) — London and
South-Western Spring Water Bill, 1882 (3
Clifford and Rickards, 179) cited—Power to
take additional lands by Agreement affecting
right to impound streams.*

*Practice—Claim of Petitioners to be heard on
previous occasion against similar powers—
Evidence in support of, reference to.*

The bill empowered the corporation of Croy-
don to construct waterworks, and among
other works to make a well and pumping
station some two miles from the head of
the river Wandle. The petitioners, as
owners of mills and other property on that
river, claimed to be heard on the ground
that the proposed well would intercept
certain underground streams which fed the
Wandle, alleging that the course of such
underground streams was well known and
defined, and that, therefore, the case did
not come within the principle laid down in
Chasemore v. Richards (H. L. C., 349).
In support of their claim to be heard they
mainly relied upon the decision of the
Court in the *London and South-Western
Spring Water Bill, 1882* (3 Clifford and
Rickards, 179), and referred to the evidence
adduced in support of their petition against
that bill, which they maintained was equally

applicable to the present case. As an additional ground for a hearing they drew the attention of the Court to a certain clause of the bill, which empowered the corporation to acquire additional lands hereafter, and for the purposes of water supply, to impound surface streams on any lands belonging to or to be acquired by them. The promoters objected that in the present case the proposed well and pumping station would be at a distance of two miles from the Wandle as compared with a distance of half-a-mile in the case of the *London and South-Western Spring Water Bill*, and that the cases were therefore dissimilar, and the evidence required was of a different character, while the power to acquire additional lands was the ordinary one inserted in similar bills and did not affect the rights of the petitioners :

Held, that the decision in the *London and South-Western Spring Water Bill* must be followed, and the *locus standi* of the petitioners allowed.

The *locus standi* of the petitioners was objected to, because (1) the petition is framed upon a misconception and in ignorance of the powers sought by the bill, *e.g.*, in the 5th paragraph it is alleged that the pumping station at Woodcote is situate on the top of a hill, and near to the head of the two branches which, united, form the river Wandle; whereas the fact is that the pumping station is not at the top of a hill, and is no less than two miles from the nearest point of the river Wandle; and in the same paragraph it is alleged that it is proposed "to abstract and draw water" from the river Wandle itself. In the 11th paragraph of the petition, however, the petitioners contradict this statement, and allege that, had the corporation sought power by the bill to take the waters of the river directly thereout, they would have been compelled by the Standing Orders of your House to give notice to the owners, &c., of mills on the river, thereby clearly admitting, as the fact is, that no water is proposed to be taken from the river Wandle, as alleged in the 5th paragraph of the petition; (2) while the petitioners admit that the promoters only seek power to sink wells upon their own lands, and to take an additional quantity of water from the chalk formation in the district, they cannot allege, nor do they, that

the bill contains any power to take any lands, streams, waters, water-courses, or property belonging to the petitioners, or to acquire any rights or easements therein; (3) the 5th allegation is further untrue, inasmuch as it alleges that there are streams which flow in known and defined channels underground which it is intended to intercept; but even if it were true (which the promoters deny), the petitioners have no right to such water, nor do they allege that they have any such right, whereas the promoters at present exercise the right to take water from wells sunk in the district; (4) although none of the petitioners are ratepayers within the borough of Croydon, or have any interest therein, a considerable portion of their petition (paragraphs 12, 13, 14, and 15) relate to matters which affect only the ratepayers and inhabitants within the borough; (5) notwithstanding the contradictory character of the petition, and of the introduction therein of irrelevant matter, the petitioners have failed to show their right to be heard against the bill; (6) the petitioners disclose no ground for a hearing according to practice.

Bidder, Q.C. (for petitioners): The bill empowers the corporation of Croydon to sink a well at Woodcote; to collect, take, divert, impound, appropriate, use and sell the water they can intercept or abstract by means of their wells and pumping stations, or from any springs, streams, brooks, or other waters on or near the site of such wells or works, or in or under any lands for the time being of the corporation. The corporation also seek powers to acquire by agreement for any of the purposes of the Act, any lands not exceeding 30 acres in extent, and any lands so acquired might, under the provisions of the bill, be used for sinking wells and acquiring water for the purposes of the proposed supply. The pumping station at Woodcote is situated on the top of a hill, and is near to the head of one of the two branches, which, united, form the river Wandle, and is so placed that the promoters will, by means of the powers sought, be enabled therefrom not only to obtain the water which percolates through the surface and underlying strata, but also to intercept and draw water from the streams which flow in known and defined channels underground from the chalk hills to the south, and which come to the surface near Carshalton near the Woodcote pumping station. The river Wandle is a river which depends almost entirely on springs fed by waters from the chalk hills; it has no tributary streams, and derives scarcely any supply from the land or surface drainage, and the interception of these springs, which will be effected by

umping station, will practically abstract the whole of the waters of this branch of the Wandle. The same petitioners petitioned against the *London and South-Western Spring Water Bill*, 1882 (3 Clifford & Rickards, 179), in which case the sources of the Wandle were held to be interfered with in the same way as are here, so the case is *res judicata*. At that occasion the promoters proposed to establish waterworks consisting, amongst other things, of a pumping station near the head of the Wandle, nearer, no doubt, than this, but in the same way, viz., by carrying away water from them, not only by surface streams, but by intercepting underground streams and feeders of the Wandle, which were then in defined channels known to engineers. An objection was taken that, in accordance with the decision in *Chasemore v. Richards* (L.R. 2 C., 349) and decisions of the Court in that case, we had no *locus standi*. Advice was accordingly given on behalf of the petitioners by engineers acquainted with the Wandle, to prove that the streams supplying the Wandle ran in well-defined channels, and the Court, upon that evidence, decided that the petitioners had established a *prima facie* case entitling them to a *locus standi*. In this case the only water which the promoters wished to interfere with was underground water, but in this case the promoters proposed also to take power to take surface streams and brooks anywhere. By clause 8 it is provided that they may not only impound surface streams and brooks, but also waters obtainable "from any springs, rivers, brooks, or other waters on or near the surface, or from such wells and intended works, or which at any time being belonging to the corporation, or which can or may be intercepted or abstracted from any of the said intended reservoir, or by the means of any of the said intended works," and clause 147 empowers the corporation, in addition to the lands they are authorised to take by the Act, to acquire hereafter, by agreement, additional lands for the purposes of the Act to any extent not exceeding 30 acres, so that they may be able under this bill to appropriate both surface streams as well as underground water. The evidence that I called in 1882 would be of great value on this occasion also.

CHAIRMAN: I think we need not hear more on this petition. You showed us on a former occasion that you had a *prima facie* case.

Ledgard, Q.C. (in reply): Though in the case of the *London and South-Western Spring Water Bill*, 1882, the Court gave a *locus standi* to the

same petitioners, in a later case in the same year, *Tilbury and Gravesend Tunnel Junction Railway Bill*, 1882 (3 Clifford & Rickards, 239), the Court seem to have refused a *locus standi* to petitioners similarly situated. In the *London and South-Western Spring Water* case, the Court held that they could not try the engineering and geological question.

The CHAIRMAN: We declined to go into the question whether the underground streams were actually well defined or not. The case which Mr. Bidder made was that the fact of there being underground water running in well-defined channels took the case out of the principle laid down in *Chasemore v. Richards*, and he convinced us that there was a *prima facie* case at all events, and the Court declined to decide the question between the engineers, merely deciding that there being in our opinion a *prima facie* case, we should send it to the Committee. In the *Tilbury and Gravesend Tunnel* case was the decision in the *London and South-Western Spring Water* case referred to?

Bidder: No; and the petitioners did not attempt to make a *prima facie* case by evidence.

Ledgard: In the *London and South-Western Spring Water* case, the well at Carshalton was half-a-mile from the head of the Wandle; here, as in the *Tilbury* case, it is distant two miles; and though there might have been a *prima facie* case on the evidence of the engineers for supposing that a well sunk within half-a-mile of where the stream came to the surface might cause an abstraction from some well-known and defined channel, it would not follow that a well two miles from the head of the Wandle would have the same effect. As to the proposition that the power in clause 147 to take additional lands hereafter to the extent of 30 acres might enable the corporation to impound surface streams, that clause is a very ordinary one.

The CHAIRMAN: We think Mr. Bidder has shown a sufficient *prima facie* case. I suppose we should give the same *locus standi* as in the *London and South-Western Spring Water* case.

Ledgard objected.

Bidder: I give an undertaking that in order to obviate my friend's objections (as to the sites of the reservoirs, &c.) paragraphs 12 and 13 shall be struck out of my petition.

Locus standi of Owners, Lessees, and Occupiers of Mills and Other Property on the River Wandle, Allowed.

Agents for Petitioners, Dyson & Co.

Agents for Bill, Wyatt, Hoskins & Hooker.

CROYDON DIRECT RAILWAY BILL.

Petition of W. M. ROBINSON AND FRANK FEARON
(PROMOTERS OF THE CROYDON CENTRAL STATION
AND RAILWAYS BILL).

21st March, 1884.—(Before Mr. PEMBERTON,
M.P., Chairman; Mr. HINDE-PALMER, M.P.;
Mr. PARKER, M.P.; Sir JOHN DUCKWORTH;
Hon. E. CHANDOS LEIGH, Q.C.; and Mr.
BONHAM-CARTER.)

*Railways—Local Lines, How far Rendered Com-
petitive by Running Powers on Rival Main Lines.*

The bill provided for the construction of a railway from Croydon to join the London Chatham and Dover railway, at Dulwich, with running powers over that company's line between Dulwich and London. The petitioners were the promoters of a bill for a railway connecting three stations in Croydon, and their scheme included running powers over the London, Brighton, and South Coast railway and the London, Chatham and Dover railway to Tulse-hill. It was contended on behalf of the petitioners that the two bills constituted competing schemes, the object of both being the conveyance of local traffic, and, ultimately, through traffic also, by means of running powers, between Croydon and London:

Held, that the competition (if any), created by the bill, was not of such a character as to entitle the petitioners to be heard.

The *locus standi* of the petitioners was objected to, because (1) the petition does not allege or show, nor is it the fact, that any land or property, right or interest of the petitioners will be taken or affected under the powers of the bill, or in consequence of the execution thereof; (2) the ostensible object of the bill is not the same as that of the bill promoted by the petitioners, which is simply a bill for connecting the various stations in Croydon with one another; (3) the petition does not allege or show that any such competition between the petitioners and the promoters would be caused by the bill, if passed, or from the works to be thereby authorised, as to entitle the petitioners to be heard according to practice; (4 and 5) the bill contains no provision affecting the

petitioners, and their petition does not disclose any ground for a hearing according to practice.

Cripps, Parliamentary agent (for petitioners): The petitioners, who are promoters of the *Croydon Central Station and Railways Bill*, allege that their bill and the *Croydon Direct Railway Bill* are competitive schemes. The Croydon Central railway is a line running from the South Croydon station to the East Croydon station on the one hand, and to the West Croydon station on the other. The Croydon direct line is a line commencing at a point in South Croydon about half-a-mile west of the existing South Croydon station and terminating by a junction with the London, Chatham and Dover at Dulwich. If the lines stood alone without running powers over other lines there might be some question whether they could be called competitive: but by means of running powers over other railways which each of the lines proposes to take, they would be competing lines as between Croydon and the Metropolis. The Croydon Central bill seeks to take running powers over so much of the London and Brighton as lies between Croydon and the London, Chatham and Dover at Tulse-hill. The Croydon Direct bill proposes, after providing for the construction of a new line to Dulwich, to take power to run over the London, Chatham and Dover, between Dulwich and London; and it also takes power for the company to enter into and carry into effect agreements with the London, Chatham and Dover railway company, with respect to the working, use, management, and maintenance by that company of the intended railway and works and other matters. So that both railways have the same object, namely, the accommodation of Croydon traffic and the conveyance of traffic between Croydon and London, the one by means of a short piece of railway, and running powers over the London and Brighton, and the other by a larger piece of railway, and running powers over the London, Chatham and Dover.

Mr. CHANDOS LEIGH: Do the two lines propose to use the same stations?

Pember, Q.C. (for promoters): No.

The CHAIRMAN: This would only be giving an additional company power to use existing lines.

Pember: Yes.

The CHAIRMAN: There does not appear to be any new competition. The Croydon Central is a line for the accommodation of Croydon traffic pure and simple; and the present Croydon traffic goes over the existing lines over which the company seek running powers?

Cripps: That is so.

MR. PALMER: Whereabouts in Croydon central station?

: On the site of the disused station of Croydon and Brighton, in the centre of the

CHAIRMAN: We must disallow the *locus standi* of the petitioners. It seems to us to be no competition. It may be an improvement on competition, but competition exists

locus standi Disallowed.

for Petitioners, Dyson & Co.

for Bill, Rees.

DENBIGHSHIRE AND SHROPSHIRE JUNCTION RAILWAY BILL.

of GREAT WESTERN RAILWAY COMPANY.

March, 1884.—(Before Mr. PEMBERTON, Chairman; Mr. PARKER, M.P.; Mr. PALMER, M.P.; Sir JOHN DUCKWORTH; WREXHAM-CARTER; and Hon. E. CHANDOS Q.C.)

Competition—Coal traffic, Apprehended in case of—Competition, distance being less by New than by Authorised Railway—Rates and Facilities—Regulation of 1873 Act, 1873.

Working authority for a short junction railway was opposed by the Great Western Company, who alleged that their coal traffic on specified routes would be diverted to the proposed line. The distance by this line was in one case seven miles, and in another case eight miles longer than that of the petitioners' system:

the competition was of too doubtful character to confer a *locus standi*.

locus standi of the Great Western railway was objected to on various grounds, and because the competition alleged by the petitioners was not of such a character as to entitle them to appear against the bill.

MR. Q.C. (for petitioners): The bill proposes to raise a railway from Welchampton to Wrexham, joining the Wrexham, Mold and Quays railway at Wrexham, and forming a junction with the Cambrian system, running in the direction of Ellesmere and

Oswestry, and the other pointing in the direction of Whitchurch. The Great Western company are at both Wrexham and Oswestry as well as Whittington; and we say that the proposed line will establish an unnecessary competition with us between Wrexham and Oswestry and Whittington, and between Wrexham and various places on the Cambrian railway. Wrexham is the centre of the coal district, and the Great Western is now the necessary route for that coal between Wrexham and Oswestry. The new line will divert this traffic, though it is true that the distance by it between these two points will be seven miles greater than by our route; and between Wrexham and Whittington the new route will be about eight miles farther.

The CHAIRMAN: You would hardly say that the new line would interfere with your passenger traffic to Oswestry or Whittington?

Saunders: No; it is mainly a question of coal traffic.

The CHAIRMAN: Is the new line to be placed in communication with any of the other lines?

Saunders: The bill contains no power to work the line by any other company; but, in the nature of things, so short a link can only be worked by some other company. The fact, however, that the bill contains no arrangements for facilities from other companies is not important, because under the Regulation of Railways Act, 1873, a small railway company professing to work their own line, are entitled, as forwarders of traffic, to go before the Railway Commissioners, and ask for through rates and facilities from the Cambrian or any other company. Of course it would be to the interest of the Cambrian company to facilitate the traffic of this new line.

Batten (for promoters) was not called on.

The CHAIRMAN: The competition apprehended here is so very problematical that we cannot allow the petitioners a *locus standi*.

Locus Standi Disallowed.

Agent for Petitioners, Mains.

Agents for Bill, Wyatt, Hoskins & Hooker.

DUBLIN (CITY OF) STEAM-PACKET COMPANY BILL.

Petition of THE LONDON AND NORTH-WESTERN RAILWAY COMPANY.

28th March, 1884.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE-PALMER, M.P.; Sir JOHN DUCKWORTH; Mr. BONHAM-CARTER; and the Hon. E. CHANDOS LEIGH, Q.C.)

Steamboats—Railway and Canal Traffic Acts, 1854 and 1873—Application of, to Steamship Companies—Railway Company owning Mail Boats—Status of, how far Changed thereby—Through Rates and Fares, Right to Apply to Railway Commissioners for—Provisions in Postal Contract.

The City of Dublin steam-packet company promoted a bill applying distinctly, to so much of their fleet as carries on under contract the postal and passenger service between Holyhead and Kingstown, the provisions of the Railway and Canal Traffic Act, 1854 (as amended by the Act of 1873 constituting the Railway Commissioners) in like manner as if they were a railway company, and their traffic railway traffic. The London and North-Western railway company, who, by means of boats of their own running between Holyhead and Dublin, carry on a competitive cross-Channel service, petitioned against the bill. They contended that its effect would be to enable the promoters, whose vessels communicated at Holyhead with the London and North-Western railway, to apply to the Railway Commissioners to fix through rates and through routes, which they would be unable to do under the general law, the provisions of the Railway and Canal Traffic Acts applying only to railway and canal, as distinguished from steamboat traffic. There had, it appeared, been previous differences between the companies involving a resort to litigation; and in the new postal contract entered into with the railway company in 1883 certain provisions were introduced corresponding with the judgment of the Court, which the petitioners now relied upon as affording sufficient protection to the steam-packet company. The London and North-Western company contended that

the bill would by private legislation change the general law, and would also change their status. There was no mention, however, of the petitioners in the bill, and it appeared that, under special Acts authorising the ownership of boats by the companies respectively, the Railway and Canal Traffic Acts were made applicable to the boats of both companies:

Held, that the point of general policy suggested was not one for the consideration of the Court, and that the petitioners' change of status under the bill, if any, was not such as entitled them to a *locus standi*.

The *locus standi* of the London and North-Western railway company was objected to, because (1) the petition does not show or allege that the bill takes away or affects any right, property, estate, or interest of theirs, or that they are in any way injured thereby; (2) neither the decision of the Railway Commissioners in 1881, nor clause 18 or the other provisions of the contract entered into between the petitioners and the Postmaster-General are in any way referred to or proposed to be dealt with or altered by the bill; (3) the petition alleges that the bill is unnecessary and uncalled for, and that it is not politic by a private bill to alter the statute law of the United Kingdom and that the bill would not serve any useful purpose or public want, but mere general allegations such as these, in the absence especially of any specific injury which is, in the petitioners' opinion, capable of being alleged, do not, according to practice, entitle them to be heard; (4) they have failed accurately or at all to specify the grounds on which they object to the provisions of the bill, and cannot therefore, according to the S. O. and practice of Parliament, be heard.

Pope, Q.C. (for petitioners): The primary object of the bill is to apply to the City of Dublin Steam-packet company the Railway and Canal Traffic Act, 1854, as amended in 1873. At present those statutes regulate railways and canals only, and do not apply to steamboat companies, but the effect of the bill would be to entitle the promoters to the status of a railway or canal company in forwarding and dealing with traffic, and they might then apply to the Railway Commissioners for a through route and through rates. As at Holyhead the promoters are only connected with the London and North-Western railway, they would be placed in a position of advantage which

they do not now enjoy with regard to their traffic; and that is an alteration in the position of the two companies which entitles us to a hearing. At Holyhead we have our own boats plying to North Wall, Dublin; but on September 29, 1883, we entered into a contract with the Postmaster-General for the conveyance of the mails between London and other places to Holyhead; the petitioners have also entered into a like contract for the conveyance of the mails from Holyhead to Kingstown. Our contract provides for fares and through booking by the mail trains, but the contract does not bind the promoters, and, under the bill, they might apply to the Railway Commissioners for a different set of rates and fares. We have already been in litigation with the promoters upon these matters. Before 1883 we had, by virtue of existing agreements with them, and after considerable negotiations with the Irish railway companies, established a system of through rates between England and Ireland by our mail trains and the promoters' steamers. In 1881, however, the promoters applied to the Railway Commissioners for through rates between London and Kingstown *via* their steamers and our trains, lower than the rates so fixed; and they also alleged that they were unduly prejudiced because we charged reduced rates by our ordinary trains and North Wall steamers. The Commissioners dismissed the first part of the charge, holding that the promoters had agreed that we should fix the rates by the mail trains and by their boats; but the Commissioners upheld the second ground of complaint, deciding that the difference between the fares by the two routes was excessive, and that no greater difference should be permitted than ten per cent., which was the difference suggested by the promoters. We accordingly altered the rates, charging ten per cent. more for the service by the mail trains and the Kingstown boats than by our ordinary trains and our North Wall boats; and clause 18 in our contract with the Postmaster-General provides that this proportionate difference between the fares by the respective routes as so reduced shall not be exceeded. But the bill will enable the promoters, notwithstanding this contract, to apply for a still further change of fares, though, no doubt, it would be a strong thing for the Railway Commissioners to grant such an application; and it will clothe the promoters, not only against ourselves at Holyhead but against other railway companies at Dublin, with powers which they do not now possess.

The CHAIRMAN: We can only go upon the facts so far as they affect you. We cannot go into the question of general policy, or the effect

of the bill upon other companies who are not before us.

Pope: I may call in aid this effect of the bill, namely, that it will constitute the Irish railways a link in a new statutory through route, and so enable them to claim rights which they do not now possess. At present the Irish companies are confined to their own side of the Irish Channel; and, there being a steamboat company interposed between us, they cannot take us before the Railway Commissioners in respect of through route and rates. The bill would alter this position.

The CHAIRMAN: The only way in which the bill could affect you would be that under it the promoters might apply to the Railway Commissioners; and then you would be heard?

Pope: Yes; we should be heard upon the merits, but not as to the promoters' right to make the application. That right would be absolute. As to the objections, it is true that the petition contains no specific allegation that the bill will injure the London and North-Western company, but no one can read the facts disclosed in the petition without seeing that our status will be altered, and that we might suffer injury. We do allege that the bill is wholly unnecessary, and that the promoters seek to vary in their own favour the general law.

The CHAIRMAN: That would not be a sufficient allegation of injurious affecting. Taking that allegation alone, it could not be gathered, even by implication, that you were affected.

Pope: It is not necessary to use specific words alleging injury; it is sufficient if the facts disclosed in the petition enable the Court to draw an inference.

The CHAIRMAN: It must be a pretty clear inference.

Pembroke Stephens, Q.C. (in reply): The bill, so far as it affects any railway companies, affects all alike. There is no mention of the petitioners, and as they do not show how they will be injured, or say that they are injured at all, a very wide door would be opened if the Court allowed them a *locus standi*. Moreover, their allegation that the bill would give a new jurisdiction to the Railway Commissioners as far as we are concerned does not agree with the statements in the petition, showing that we have both been already before the Commissioners, who decided against the petitioners. There is nothing more in the bill than the right to go before a Court, and abide by the decision of that Court.

The CHAIRMAN: Do you deny the statement that, as things stand at present, you could not go to the Railway Commissioners to ask for a through route and through rates?

Stephens : Yes. These steamboats of the Dublin company were established under an Act of 1855, providing for the improvement of the postal and passenger traffic between Great Britain and Ireland; and that Act declared that the Railway and Canal Traffic Act should, so far as it was applicable, extend to those steamboats and to passengers and parcels carried therein.

Pope : If, under the Act of 1855, you have the power of going before the Railway Commissioners, the short answer is, that you do not want your present bill.

Stephens : That is another thing. The petitioners' contention is that, as the Railway and Canal Traffic Act applies to railways and not to steamers, there will, under the bill, be such an alteration in the status of the two companies as entitles them to be heard. The short answer to that argument is, that the Acts establishing not only the Dublin company's, but the North-Western railway company's boats, applied to both companies the provisions of the Act of 1854; moreover, the matter has been before the Railway Commissioners, who decided, not on all points, but substantially, in our favour.

The CHAIRMAN : We need not trouble you further. The Court are of opinion that there is not a sufficient change in the status of the petitioners under the operation of this bill to entitle them to be heard.

Locus standi Disallowed.

Agent for Petitioners, *Mason*.

Agents for Bill, *Grahames & Co.*

EAST LONDON RAILWAY BILL.

Petition of THE METROPOLITAN BOARD OF WORKS.

21st March, 1884.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE-PALMER, M.P.; Sir JOHN DUCKWORTH; Hon. E. CHANDOS LEIGH, Q.C.; and Mr. BONHAM-CARTER.)

Lease of Railway, a Separate Part of General Undertaking—Judgment Creditor of Railway Company, Metropolitan Board of Works as—Appropriation of Rent to Payment of Dividend—Disposal of Available Asset—Alleged Interference with present Remedy of Petitioners—Legal Question Raised—Practice.

The bill provided for the working and rental of a portion of railway jointly by two companies, and clause 5 enacted that "every sum of money paid by the two companies, or either of them, to the company, shall

be applied by the company in payment of the half-yearly dividends upon the capital of one hundred and twenty-five thousand pounds raised by them under the authority of the Act of 1882, and to no other purpose whatever." The Metropolitan Board of Works were creditors of the company to whom the line dealt with by the bill belonged, and had obtained a judgment of the High Court for the amount in question. They objected that the bill disposed of an available asset of the debtor company by appropriating the income derived from the rent to be paid by the two leasing companies exclusively to the payment of dividends, thus depriving them of their claim upon the receipts of a portion of the company's railway. It was contended that the portion of railway in question was a separate undertaking, authorised by an Act passed subsequently to the obtaining of the judgment by the board against the company, and with a separate capital; and that the company were, in fact, not ~~creditors~~ of the board in respect of such separate undertaking :

Held, that as the Court were not competent to decide as to the legal question raised upon the petition, the petitioners ought to be heard upon merits before the Committee on the bill.

The *locus standi* of the petitioners was objected to, because (1) the main object of the bill is to give effect to certain provisions of the East London Railway Act, 1882, with respect to the working and maintenance by the Metropolitan and the Metropolitan District railway companies of the Whitechapel junction railway of the promoters, and the petitioners, who claim to be creditors of the promoters for a sum of about £5,000, object to the bill, as being a disposal or transfer of an available asset of the promoters; (2) but the rights and remedies of the petitioners in respect of the recovery of whatever money may be due to them from the promoters are in no way altered or varied, or the exercise thereof impeded by the provision of the bill before referred to, or by any other provision thereof; and neither that nor any such other provision entitles the petitioners to be heard against the bill; (3) the petitioners also object to the application in the manner provided

by clause 5 of the bill of the moneys to be paid as rent by the said two companies to the promoters, and they suggest that there ought to be inserted in the bill an express declaration that these moneys shall be subject to the payment of the promoters' debts and liabilities; (4) the petitioners are not, according to practice, entitled to be heard either in respect of the said application of the rent as provided by clause 5, or in support of their said suggestion; (5) the promoters deny that the petitioners have any claims against them upon or in respect of the railway referred to in the petition, such railway being, as regards capital, a separate undertaking authorised since the alleged debt to the petitioners was incurred, the claim of the petitioners being for interest upon a debt incurred in respect of the original undertaking of the promoters authorised by their Act of 1865, the principal of which debt has long since been discharged; (6) the petition discloses no ground for a hearing according to practice.

Cripps, Parliamentary agent (for petitioners): The bill is entitled: "A bill to provide for the Working and Rental of the East London Railway Whitechapel Junction, and for other purposes," and the companies who are to work and rent the railway in question are the Metropolitan and Metropolitan District railway companies. The petition of the Metropolitan Board of Works alleges that the East London railway company have been for a long time indebted to them in large sums of money. The debt was incurred in connexion with the construction of the original undertaking of the company, and in respect of works, which, as they involved considerable interference with the sewers of the metropolis, were undertaken and executed by the Board on behalf of the company, who now owe the Board over £5,000. In 1882 the Board presented a petition against a bill then promoted by the East London railway company, in which this debt was referred to, but the petition was not pressed, it being stated in evidence by the chairman of the East London company before the Committee that he was only waiting for an order of the Court to pay the amount. The debt itself is secured by a judgment in the ordinary way, and there can be no doubt as to the validity of that judgment.

The CHAIRMAN: Is not the whole point raised in paragraph 7 of the petition, which alleges, "The object of the present bill is to dispose of a piece of railway forming an available asset of the East London railway company, and to ask Parliament to enact that the moneys derived therefrom shall not be applicable to the payment of any debts of the company, but shall

be paid by way of dividend to the holders of a certain specified portion of the capital of the company." That seems to be the whole ground upon which you ask for a *locus standi*.

Cripps: That is a correct description of the effect of the bill in reference to the Board as creditors of the company. The important clauses are clauses 4 and 5. Clause 4 provides for the payment of the money to the East London railway company, and clause 5 enacts, "Every sum of money paid by the two companies, or either of them, to the company shall be applied by the company in payment of the half-yearly dividends upon the capital of one hundred and twenty-five thousand pounds raised by them under the authority of the Act of 1882, and to no other purpose whatever." Our contention is that the payment of this particular debt of the East London railway company is a purpose other than the payment of dividends upon that capital. The effect of clause 5 appears to us to be to deprive the Metropolitan Board of Works of any right or powers to enforce their judgment as against this particular income of the company.

The CHAIRMAN: Is your statement in paragraph 7 of the petition correct, that "the object of the present bill is to dispose of a piece of railway forming an available asset, &c."? I cannot see any clause in the bill having that effect. The bill seems to be simply an arrangement by which a certain part of the East London railway, i.e., the Whitechapel junction, is to be worked by the two companies, in consideration of a perpetual rent-charge.

Cripps: No doubt the line is not disposed of in the sense of an absolute conveyance or assignment of the actual property, but there would be such a disposal of this particular railway, that after the Act was passed the income derivable from it would be specifically allocated to the payment of dividends on a particular class of capital, and not be available for the discharge of the debts of the company. At the present moment we have a remedy against the company in respect of the receipts derivable from this particular piece of railway.

The CHAIRMAN: Might not that same argument be raised by any judgment creditor in every case of a transfer to another company?

Cripps: If it were a case of transfer without any specific disposition of the assets, no doubt we should have the same remedy against the transferred undertaking. But this bill goes further than that; it provides specifically that the money arising from this transaction with regard to this undertaking shall be applied to no other purpose whatever than the payment

of the half-yearly dividend upon the capital specified.

Mr. HINDE-PALMER: There is nothing in the bill that authorises anything like a transfer or sale of this particular railway. The words "dispose of," in paragraph 7 of the petition, would only be used in the sense of dealing with it as a security.

The CHAIRMAN: You must show us that the bill affects your present remedy against the receipts of the company.

Cripps: That appears from the words of Clause 5. If the undertaking were left in its present form, I should have the ordinary remedy of a judgment creditor against the income derivable from it.

The CHAIRMAN: Your object would be secured, if a clause were inserted in the bill saying that the arrangement should be without prejudice to the claims of any creditors?

Cripps: Or in any way that would show that the payment of dividends provided in clause 5 was not to override the claims of the creditors.

Reader Harris (for promoters): I admit that there has been a judgment for £5,000 against the East London railway company; but the Whitechapel junction railway dealt with by the bill is an entirely separate undertaking, which that judgment does not affect. That judgment was obtained by the Metropolitan Board of Works in 1877. This railway was authorized in 1882. Sec. 24 of the Act of 1882, which authorized the construction of this line, is as follows:—"The company may from time to time raise such sum or sums of money as they think fit, not exceeding in the whole £125,000, by the creation and issue of shares or stock or debenture stock secured upon the net profits of the railway by this Act authorized, and the railway shall for such purpose be deemed to be a separate undertaking;" and sec. 26 of the Act is—"The new capital by this act authorized to be raised as aforesaid shall be applied in or towards the construction and completion and otherwise for the purposes of the railway by this Act authorised . . . and shall not be entitled to participate in the profits applicable to dividend of any other part of the undertaking of the company," so that it is a separate undertaking altogether. The line is guaranteed by the Metropolitan and Metropolitan District railway companies.

The CHAIRMAN: The whole point is, does the judgment affect this particular railway?

Harris: It does not. The petitioners have got their judgment against the East London railway as it was in 1877.

Cripps: As a matter of fact we have an Order of the Court, dated 28th February, 1883, which

recites: "The defendants, not having complied with the Order dated 23rd June, 1877," &c., on them, "it is adjudged that the plaintiffs recover against the said defendants £5,167 12s. 8d., balance due." A judgment against a debtor will affect whatever property the debtor may possess.

The CHAIRMAN: No doubt that is so in the case of a private individual, but in the case of a railway company who subsequently raised capital from different shareholders for an entirely different purpose from the original one, I apprehend that the judgment would not apply to that new undertaking.

Cripps: This railway is a part of the East London railway company's undertaking, and these assets should not be handed over to somebody else other than the creditors without the creditors having the opportunity of saying something about it.

The CHAIRMAN: That raises the question whether the board is a creditor of the company in respect of this undertaking.

Harris: The Board is a creditor of the general but not of the separate undertaking.

The CHAIRMAN: It seems to be purely a legal question, what the effect of the judgment is upon the capital and property of this new undertaking.

Harris: If the petitioners have any legal right they would still be able to enforce it.

The CHAIRMAN: I am not sure they would in the face of clause 5 of the bill.

Mr. HINDE-PALMER: The judgment does not, upon the face of it, apply to any particular line. It is a general judgment against the company, without giving a special lien upon any part of the railway.

Harris: No; if this were a part of the general undertaking of the East London company guaranteed by them, and for which they were responsible, there would be something in the argument; but this is an entirely separate undertaking with a separate body of proprietors.

The CHAIRMAN: We think that we must allow the *locus standi* of the petitioners. If we disallowed it we should be deciding a point of law which we think we are not the proper tribunal to decide. If we let you in you can argue the point elsewhere.

Locus standi of Petitioners Allowed.

Agents for Petitioners, *Dyson & Co.*

Agents for Bill, *Sherwood & Co.*

**EAST OF LONDON, CRYSTAL PALACE
AND SOUTH-EASTERN JUNCTION
RAILWAY BILL.**

**Petition of (1) METROPOLITAN BOARD OF
WORKS.**

25th April, 1884.—(Before Mr. PEMBERTON, M.P.,
Chairman; Mr. HINDE-PALMER, M.P.; Mr.
MELDON, M.P.; Sir JOHN DUCKWORTH; Hon.
E. CHANDOS LEIGH, Q.C.; and Mr. BONHAM-
CARTER.)

**Construction of Railway within Metropolis—
Interference with Roads and Sewers—Local
Authority—Metropolitan Board of Works claim-
ing General Locus Standi—Metropolis
Management Acts, 1855, 1862.**

The bill authorised the construction of a railway partly within the metropolitan area, as defined by the Metropolis Management Act, 1855, and the Metropolitan Board of Works claimed a general *locus standi* on account of interference, by the proposed construction of works, with roads and sewers within their jurisdiction. The promoters conceded to the Board a *locus standi* limited to the clauses authorising such interference, but denied the right of the Board to be heard as to the policy of constructing the railway, urging in argument that the question involved, so far as the Board was concerned, was one of the method of constructing works and not of policy, and was therefore of a limited nature. The petitioners relied upon the extensive powers conferred upon them by the Metropolis Management Acts, 1855 and 1862, and upon repeated decisions of the Court in favour of their general right to be heard against similar bills:

Held, following previous decisions, that the Metropolitan Board of Works were entitled to a general *locus standi*.

The *locus standi* of the petitioners was objected to, because (1) the petition does not allege or show, nor is it the fact that any land, property, right, or interest of the petitioners will or can be taken or interfered with under the powers of the bill; (2) the new road referred to in the said petition, paragraph 7, authorised by the Peckham, Lewisham and

Catford Bridge Road Act, 1882, does not exist, and has not even been commenced, but is an authorised work only. If such road should ever be made and dedicated to the public use, it would not be vested in or be under the control or management of the petitioners, but under that of the Vestry of St. Giles, Camberwell, and the Lewisham District Board of Works, who have the control and management of the public roads within their respective districts, and the petitioners have not and would not have any right or interest therein; (3) the petition does not allege or show, nor is it the fact, that any public street within the metropolis, which it is alleged would be or might be interfered with under the powers of the bill, is vested in the petitioners, or that they have the control, care, or management of any such street; (4) all public roads, streets, and thoroughfares (if any) within the metropolis, which would or could be interfered with under the powers of the bill, are vested in and are under the control, care, and management of the Lewisham District Board of Works who are the proper and only body of persons (if any) entitled to be heard against the bill in respect of the powers sought by the bill affecting such roads, streets, or thoroughfares; (5) the promoters deny that any main drain or sewer vested in the petitioners or of which they have the control or management will be taken or interfered with under the powers of the bill; all sewers or drains (if any) which will or may be affected under the powers of the bill are vested in the Board of Works for the Lewisham district who have the control and management of such sewers and drains, and they are the proper body or persons (if any) entitled to be heard against the said bill in respect of the powers which will or may affect such sewers and drains; (6) the petition discloses no ground for a hearing according to practice.

[Pember, Q.C., on behalf of the promoters, conceded to the Metropolitan Board of Works a *locus standi* limited to interference with roads and sewers, but the Metropolitan Board of Works claimed a general *locus standi*.]

Cripps (for petitioners): The Metropolitan Board of Works claim a general *locus standi* in respect of their general jurisdiction, first, over the streets, and secondly, over the sewers of the metropolis. Clause 6 of the bill will interfere to a very serious extent with the streets of the metropolis, because it takes power to cross twenty or thirty streets. In the case of such interference with streets, the Board has a general right to supervise alterations. By section 74 of the Metropolis Management Act, 1862, the Board are empowered "in all cases

where buildings projecting beyond the general line of the street are at any time taken down or removed, to require the same to be set back to such a line and in such manner for the improvement of any street as the Board shall direct," and section 75 of the same Act provides, that "no building, structure, or erection shall, without the consent in writing of the Metropolitan Board of Works, be erected beyond the general line of buildings in any street, place, or row of houses, such general line of buildings to be decided by the superintending architect of the Board, and that in case any such erection be begun or erected without the consent of the Board, the same may be removed." Under the bill the company would be allowed to construct the piers or abutments of their various bridges crossing any streets of the metropolis without reference to the building line laid down by the Board; in fact the promoters would be enabled to override the general powers of the Metropolitan Board of Works under their general Acts. Again, under section 144 of the Metropolis Management Act, 1855, the Board are empowered to make, widen, and improve streets, roads, and ways for facilitating the passage of traffic between different parts of the metropolis, and by section 84 of the Metropolis Management Act, 1862, it is provided that streets within the metropolis shall not be closed by the vestries and district boards of the metropolis during the execution of paving, sewerage, and like works by such vestry or board, without the consent of the board. This bill would indirectly interfere with those powers.

The CHAIRMAN: Does the bill give power to the company to make any new roads, streets, or ways?

Cripps: No; but it would enable them to interfere with existing streets or roads and no such interference is now allowed by the Metropolitan Board of Works unless a *minimum* width of 40 feet is given. The company would have power to act in contravention of that rule of the Metropolitan Board of Works.

The CHAIRMAN: Would they have power under the bill to make streets of less width than 40 feet?

Cripps: Under the general powers of the Railways Clauses Consolidation Acts, which are incorporated with the bill, a *minimum* width of 25 feet is prescribed. Secondly, as regards interference with drains and sewers, the Metropolitan Board of Works have constructed the present main drainage system of the metropolis, and are charged with the duty of maintaining and managing that system. The Metropolis Management Act, 1862, secs. 45, 47 and 58, provides that no sewer shall be con-

structed within the metropolis, whether by any vestry or district board or other person, without the approval in writing of the Metropolitan Board of Works. The deposited plans and sections show that the proposed railway, as alleged in the petition of the Metropolitan Board, will pass for a considerable distance through the metropolis, and that it will pass over and under public streets within the metropolis, which may be taken or interfered with, and that sewers vested in the Metropolitan Board or connected therewith, may be taken or interfered with for the purposes of the bill. The question whether the Metropolitan Board of Works should have a general or limited *locus standi* against a bill involving such an interference with their jurisdiction as this bill, has been repeatedly decided in favour of a general *locus standi*, e.g., in the *Metropolitan Railway Bill*, 1870 (2 Clifford & Stephens, 22); *Metropolitan Railway Bill*, 1871 (*Ib.* 104); *London and St. Katherine's Docks Bill*, 1875 (1 Clifford & Rickards, 162).

Mr. HINDR-PALMER: Do any local authorities also petition?

Cooper, Parliamentary agent for the bill: The whole of the works within the metropolis are within the district of the Lewisham Board of Works, and, by arrangement between the promoters and the Lewisham Board of Works, clauses have been submitted and will be dealt with in proper time under an understanding that, if not agreed to, the Lewisham board shall be at full liberty to petition in the second House. The clauses they have submitted are for protecting the streets within their jurisdiction.

Pember, Q.C. (in reply): The Metropolitan Board of Works have a right to be heard as to interference with roads and sewers, but not as to the general policy of constructing the proposed railway. No doubt the decisions in the cases referred to on behalf of the Metropolitan Board of Works are, at any rate at first sight, in favour of a general *locus standi*, but that contention ought not to be supported now that the question of *locus standi* has come to be more fully understood. In the case of the *London and St. Katherine's Dock Bill*, 1875, the question involved was not one of mere detail, as in this case; that is to say, the crossing of a road by bridge of a particular span or headway, but there was a distinct allegation in the petition that the new works themselves, in their nature, would obstruct the future extension of the main drainage system of the Metropolitan Board of Works. That went to the policy of the whole bill.

Cripps: The main sewerage scheme was completed long before 1875.

MAN: That case is a very strong one, the Metropolitan Board of Works being enabled to oppose the principle of the construction of the docks.

Still the question involved in that is the general one, whether the construction of the docks and the development of a drainage scheme were compatible. In the case of the Metropolitan Board only wish to carry out of the works connected with the proposed railway in such a manner as not to interfere with the exercise of their powers under the general Acts, and not to prevent the construction of the railway altogether. The Board is not to be concerned with the general scheme. Then in the case of the *Railway Bill*, 1871, the essence of the policy of allowing ventilating made in the streets, and with that question, as affecting the traffic in the Metropolitan Board were the proper question.

MAN: It seems to me that you can separate the question of construction from the question of policy.

CHANDOS LEIGH: In the case of the *Railway Bill*, 1870, the same argument of *locus standi* was unsuccessful by the counsel for the bill (2 Stephens, 23) and the Metropolitan Board of Works were given a *locus standi* for the abandonment of a railway. The Metropolitan Board of Works has nothing to say to the preamble of the bill, which recites the expediency of construction of a railway. They can only be concerned with the details of its construction so far as it affects their rights and interests in the roadway. Therefore, according to the principles laid down by this Court, questions relating to the Board should be decided, and the *locus standi* here limited to the Board are really concerned with the question of carrying out the construction of the works authorised by the bill without interfering with the general powers and interests of the Board.

MAN: We think the cases are too strong for you. We must allow the *locus standi* of the Metropolitan Board of Works to stand generally.

For Petitioners, *Dyson & Co.*

(2) THE LONDON, CHATHAM AND DOVER RAILWAY COMPANY.

Mr. B. appeared for the petitioners.

Q.C., on behalf of the promoters,

conceded a *locus standi* to the petitioners on the ground of competition.

Locus Standi of London, Chatham and Dover Railway Company Allowed.

Agents for Petitioners, *Martin & Leslie.*

Agent for Bill, *Cooper.*

EDINBURGH NORTHERN TRAMWAYS BILL.

Petition of STANDARD LIFE ASSURANCE COMPANY, AND OTHERS.

2nd May, 1884.—(Before Mr. HINDE-PALMER, M.P., Chairman; Mr. PARKER, M.P.; Mr. MELDON, M.P.; Mr. BONHAM-CARTER; Sir JOHN DUCKWORTH; and the Hon. E. CHANDOS LEIGH, Q.C.)

Tramways — Frontagers — Street, meaning of under S. O. 135 (Petitions against Tramway Bills) — Sea-Wall protecting Roadway — Road Authority, representing Frontagers — Ratepayers, distinct Interest of — Owners and Feuars contributing towards Maintenance of Sea-Wall — Tramway Company, Liability of, to Repair Sea-Wall protecting Roadway — S. O. 13 (Notice to Frontagers in case of Tramways) — S. O. 128 (Petition against Bill to Specify Grounds of Objection.)

No. 3 of certain proposed tramways would traverse a roadway protected from the sea, in part of its course, by a sea-wall. This sea-wall, under agreement between the road authority and the owners of property and their feuars, was repaired by the former, who contributed one-tenth of the expense, levying the remaining nine-tenths upon the owners and feuars. The tramway company had agreed to pay the road authority a certain yearly sum as way-leave. The owners and feuars, however, petitioned against the bill on the ground that the promoters would damage the sea-wall by using the roadway, and, in any event, should contribute towards the cost of repairing the sea-wall, the main use of which would be for the protection of their line. The promoters contended that, under the bill, they would merely acquire a right of user over the road for their vehicles, the sea-wall not being mentioned in the

bill, or interfered with by their works; that the petitioners were merely contributories who were represented by the road authority; and that they were really seeking to alter the incidence of rating affecting them by inserting a provision on a subject outside the scope of the bill:

Held, that in view of the facts, and of the arrangement come to between the promoters and the road authority, the latter did not represent the petitioners, whose interest, *quod* the sea-wall, was distinct from that of ratepayers; and that, on the whole, the petitioners were entitled to a general *locus standi* against tramway No. 3.

A thoroughfare traversed by a tramway consisted of houses on one side only, a sea-wall being on the other:

Held, that this was a street, and that owners and occupiers were frontagers within the meaning of S. O. 135.

The *locus standi* of the petitioners was objected to, because (1) no land, &c., of theirs will be taken; (2) or rights or property interfered with; (3) they cannot be injuriously affected in such a way as to entitle them to be heard; (4) the bill contains the usual clauses for compensation to persons whose lands will be injuriously affected, and if the petitioners are so affected (which the promoters deny) the usual remedy is provided; (5) the petitioners are not owners or occupiers of any houses, shops, or warehouses in any street through which it is proposed to construct the tramways within the meaning of S. O. 135; (6) the petitioners are not *bond fide* frontagers within the meaning of S. O. 135; (7) if any of the petitioners are such frontagers, they are only entitled to be heard so far as their respective premises are affected within the terms of S. O. 135; (8) the petition does not disclose any right or interest, or any ground of objection—and, in fact, none exist—entitling the petitioners, according to precedent and practice, to be heard against the bill.

Shiress Will, Q.C. (for petitioners): We claim on three grounds—as frontagers under S. O. 135; as having been served with notice under S. O. 13; and as having certain rights of property in the road to be traversed by the tramways. The Standard Life Assurance company are proprietors of the estate of Trinity, and the other petitioners are feuars under them. In the year 1829 a portion of this estate, bordering on the Firth of Forth,

was sold to certain trustees for the construction of a road between Newhaven and Granton. This road, where it passes between our lands and the sea shore, is protected by a bulwark retaining wall, which the road trustees are bound to keep in repair, with the right to recover from the proprietor of the estate and from certain of his feuars nine-tenths of the expense. Under the Roads and Bridges (Scotland) Act, 1878, the ownership and custody of this road has been transferred from the trustees to the magistrates and council of Leith. Tramway No. 3 will be laid along this road; and we say, first, that the construction of the tramway, and its working, will injure the sea wall; and secondly that, as the tramway will chiefly gain by the maintenance of the sea-wall, it is only equitable that the whole, or some proportion of the expense of maintaining it, should be borne by the tramway company. The promoters object that this is not a street within the meaning of S. O. 135.

Pembroke Stephens, Q.C. (for promoters): There are houses only on one side of this thoroughfare and the sea-wall on the other.

Will: The courts of law have held that it is a street if there are only houses on one side. Princes-street, Edinburgh, is a case in point.

Mr. CHANDOS LEIGH: King's-road, Brighton, is a similar case.

The CHAIRMAN: Trinity-crescent, in front of which the tramway runs, is a row of houses facing the sea, and they have access to the road, and to the sea by crossing the road?

Will: Yes; and there are cases in point (3 Clifford & Rickards, 226; *Ib.* 242.)

The CHAIRMAN: The Court are of opinion that this is a street within the meaning of S. O. 135.

Will: The question then arises whether, this being a street, the petitioners sufficiently allege that they are prejudicially affected. At present, the greater part of the cost of maintaining the sea-wall is borne by the Standard Life Assurance Company and certain of their feuars. If, as we contend, the working of the tramway will add materially to this cost, it is only just that the promoters should contribute towards it. Again, we now have, as landowners, a right to open the road for the purpose of making sewers and drains, but the construction of the tramway would injuriously affect the exercise of this right. We have also been served as frontagers with notices under S. O. 13.

Stephens: I do not admit that the petitioners' houses are within the prescribed distance of the tramway. On the side of the thoroughfare next the sea the distance from the kerb to the rail may be less than nine feet six inches,

but that is not the case on the side on which the houses are.

Will: That does not matter. The S. O. applies if there be less than nine feet six inches on either side of the road, but as a matter of fact at one point there is less than nine feet six inches between the kerb and the tram-rail upon the side of the road next to the petitioners' houses. As to the objection that we do not sufficiently allege our status as owners or the injurious affecting, there is certainly no specific allegation to that effect, but it appears with sufficient clearness from the general tenour of the petition; and the promoters themselves raise the issue by alleging that our lands are not interfered with.

Stephens (in reply): The petitioners cannot avail themselves of the notice of objections to cure a defect in their petition. (*Thames Deep Water Dock and Railway Bill*, 1882, 3 Clifford & Rickards, 233.) S. O. 128 requires petitioners to specify distinctly the grounds upon which they object to the provisions of the bill. In the discretion of the Court, the use of technical words may be dispensed with if the petitioners sufficiently indicate that they may be injuriously affected. Here, however, the Court are asked to import into the petition something absent from the mind of the person who drew it, and only supplied in argument. As to the bulwark, the proper persons to appear are those directly charged with the duty of repairing it and the road. Here the promoters have come to an agreement for the use of the road with the authority who repair both the road and the bulwark. That being so, there is no recorded case in which ratepayers have been heard.

Mr. MELDON: In ordinary cases the road authority would represent the ratepayers, and there would be no distinct interest. Here, the allegation is that the road authority will receive from the promoters a money payment for the use of the road, while the petitioners will remain mainly responsible for the repairs of the bulwark. There is, therefore, a distinct and, indeed, an antagonistic interest.

Stephens: The road authority contribute one-tenth of the cost of repairing the sea-wall, and the petitioners nine-tenths. No doubt the petitioners' interest is the larger, but it is the same interest; and where there is an authority representing the ratepayers, contributories have no *locus standi*. These petitioners are contributories, and theirs is a ratepayers' grievance. They have no liability in respect of the road which we touch; their liability attaches to the bulwark, which we do not touch. There would be quite as much danger to the bulwark from the passage of a heavy steam-roller

as from the working of a tramway by wire-rope traction. Ours will be a mere user of the road for a new kind of vehicle, under conditions arranged with the road authority, with no power whatever over the bulwark.

Mr. MELDON: The petitioners do not seem to have sufficiently alleged their claim as landowners or frontagers. But I do not think we can shut them out upon the question of the bulwark, and as that would be a general *locus standi* there would be no use in discussing other points.

Stephens: There is nothing about the bulwark in the bill. To give the petitioners a *locus standi*, therefore, upon the question of the bulwark, would be to allow them to raise an issue outside the bill, and to take advantage of the bill in order to insert some provision with a view to alter the incidence of rating, under an arrangement come to in 1829, which has nothing to do with the bill.

The CHAIRMAN: We think, upon the whole, that the petitioners are entitled to a *locus standi* against tramway No. 3, and so much of the preamble as relates thereto.

Locus standi Allowed.

Agent for Petitioners, *Loch*.

Agents for Bill, *Simson & Wakeford*.

GREAT NORTHERN RAILWAY BILL.

Petition of (1) WILLIAM THOMPSON.

14th March, 1884.—(*Before Mr. PEMBERTON, M.P., Chairman; Mr. PARKER, M.P.; Sir JOHN DUCKWORTH; and Hon. E. CHANDOS LEIGH, Q.C.*)

Railway Abandonment—Alleged Agreement with Landowner—Breach of Faith—Absence from Act authorising Railway of Compulsory Powers over Petitioner's Lands—Permissive Powers to construct Railway subject to Agreement—No Contract between Parties—Penalties Clause, when Applicable.

A bill for the abandonment of certain railways authorised by the Great Northern Railway Act, 1880, was opposed by a landowner, who stated that an arrangement had been come to between himself and the railway company in 1880, whereby he had agreed to relinquish the construction of a private railway or tramway between his quarry and the company's railway, in consideration of

the company themselves constructing a branch line to the quarry. In support of the petitioner's contention that such an arrangement existed at the time of the promotion of the Act of 1880, two letters were read from the company to the petitioner referring to the branch railway in question, and the petitioner contended that the bill amounted to a breach of faith in regard to the arrangement between himself and the company, in consequence of which he had been deterred from proceeding with the construction of the railway himself, and so developing his quarry. On behalf of the promoters it was urged that no contract had ever existed between the parties; that the powers contained in the Great Northern Railway Act, 1880, to take lands for the purposes of the railway, and for the construction of the railway itself, were not compulsory, but permissive, and subject to agreement with the neighbouring landowners; that the Act contained nothing, either in the nature of penalties or otherwise, which the petitioner could at present enforce against the company, if they failed to construct the authorised railways; and that the bill deprived the petitioner of no remedy which he at present had against the company:

Held, that in the absence of a special agreement between the company and the petitioner, and in accordance with the practice of the Court with reference to the petitions of landowners against abandonment bills, the petitioner was not entitled to a *locus standi*.

The *locus standi* of the petitioner was objected to, because (1) the petition does not allege nor is it the fact that any lands, buildings or property of his can be taken under the powers of the bill; (2) the petitioner does not allege that he is the owner, lessee, or occupier of any lands, buildings, or property authorised to be taken for the railway sought to be abandoned; (3) the petitioner does not state that any contract or agreement was entered into between himself and the promoters, and the promoters deny that any arrangement was come to between the petitioner and themselves as is alleged in the petition; (4) the bill contains

the usual clauses for compensation to persons injuriously affected by the proposed abandonment; and if, therefore, the petitioner is injuriously affected (which the promoters deny), the usual remedy for him is provided by the bill; (5 and 6) the revocation of contingent and consequential rights and benefits, which the petitioner might have derived from the construction of the railway, does not entitle him to be heard against the abandonment thereof, nor does the petition disclose any ground for a hearing according to practice.

Coward (for petitioner): Clause 23 of the bill authorises the Great Northern railway company to abandon the construction of the railways at Ancaster, in the neighbourhood of Kesteven, in Lincolnshire, authorised by The Great Northern Railway Act, 1880. The petitioner is the lessee of an extensive and valuable stone quarry, forming one of the quarries known as the Ancaster quarries. In 1879, in order to provide adequate means of transit and to develop his quarry, the petitioner proposed to make a tramway or railway from the Ancaster station of the Great Northern railway to his quarry, with the intention that it should be extended to other neighbouring quarries and works. In the summer of 1879, the petitioner opened negotiations with the company with the view of getting the proposed tramway made, either by himself alone, or in conjunction with neighbouring quarry owners, or by the company. His plans had been prepared; he had placed himself in communication with the Great Northern company, in order to obtain their consent to his making a junction with their line, and their consent had been given, when the company conceived the project of making the line themselves, and accordingly sent their own engineer over the line projected by the petitioner. In the result the petitioner's plans and estimates were adopted by the company, and, after several interviews and some correspondence, the company elected to construct railways out of their own funds and as part of their general undertaking in lieu of the tramway proposed by the petitioner. Accordingly, in the Session of 1880, the company introduced a bill which ultimately became "The Great Northern Railway Act, 1880," by sec. 4 of which the company obtained powers to make the railways at Ancaster mentioned in that section, and also obtained power to agree with the owners, lessees or occupiers of the mines or quarries intended to be served by the said railways to contribute towards the cost of constructing and maintaining the intended railways, either by payment of gross sums, or by annual sums in the shape of

rent or guaranteed revenue. Paragraph 9 of the petition sums up the grievance of the petitioner against the company thus: "On the faith of the arrangement come to with the company, and their obtaining the powers contained in their Act of 1880, the petitioner took no further steps to obtain the railway communication he so much needed for the development of his quarries." Since, however, the passing of that Act of 1880, the Great Northern company have taken no steps whatever to make the railways at Ancaster except setting the line out, although the petitioner has repeatedly pressed the matter upon them and pointed out to them the great injury and damage he was sustaining from the delay in the construction of the authorized railways. The petitioner then alleges in his petition that he has suffered serious injury to the development of his quarry by this delay, and that the abandonment of the construction of the railway will inflict still further loss and injury upon him, and submits that the company, in seeking to abandon the construction of the authorized railways at Ancaster, have committed a grave breach of faith with him, and that such proposed abandonment should not receive the sanction of Parliament. Although no formal contract may have been entered into with the petitioner by the Great Northern railway company, there was a distinct understanding between them that, in consideration of the abandonment by the petitioner of the intended tramway to his quarry, the company would make the line authorized by their Act of 1880; and that arrangement is shown to have existed by the following letters, besides others which have not been preserved or cannot be found. On the 24th June, 1880, while the Great Northern railway bill was pending, the company sent the following letter to the petitioner:—"Dear Sir,—If the provisions relating to the Ancaster stone quarries are to be retained in the bill, it is now essential that some arrangement should be made with the Great Northern company thereon. We shall be glad, therefore, to have some satisfactory and definite communication from you on the subject, otherwise the provisions must be erased from the bill." The result was that, on 30th of June, 1880, the petitioner, attended by his solicitor, saw the Great Northern authorities in London, and the directors asked him if he would guarantee a traffic of 5 per cent. upon the estimate, which the petitioner agreed to do, and also requested him to agree with the company for a lease of 21 years, and, in consequence, the petitioner obtained from his ground landlord an extension of his lease.

The CHAIRMAN: This appears to have been all verbal. Is it made out by your petition that there has been a breach of faith?

Coward: A breach of faith amounting to a breach of agreement. On 12th July, 1880, the company determined that it would be for their interest to construct the line themselves, and agreed finally with the petitioner to include the construction of the line in their bill, in consideration of the petitioner abandoning the idea of constructing the tramway himself, and on that date wrote a further letter to the petitioner as follows:—"Dear Sir,—On reconsidering the arrangement, the directors have come to the conclusion that it would relieve the matter from complication if the proposed branch were constructed out of the funds of the company, and as part of its general undertaking." Accordingly he did not oppose their bill, and it received the sanction of Parliament. Since that time, however, until the present nothing has been done by the company, and the petitioner has consequently been prevented from proceeding with the construction of the tramway himself.

The CHAIRMAN: That is past history. How are you affected by this bill at present? Can you, if this bill did not become law, compel the company to make the railway?

Coward: They are subject to penalties if they do not make it.

The CHAIRMAN: Not at your instance, I take it. It seems to me that there was no special contract capable of being enforced, but that it only amounted to this,—that, in consideration of the company's application for powers to make the line, the petitioner abandoned a project of his own.

Coward: As to the question whether that was or not a contract capable of being enforced in the Courts, I submit that the Court will not enter into that legal question. The letters I have read are *prima facie* evidence of the existence of the agreement.

The CHAIRMAN: Allowing that there is a breach of faith, how will it be affected by this bill? If there is a breach of faith, your remedy for that breach will still exist.

Coward: My remedy may exist at law, but I wish to have my interest protected in the bill.

Mr. CHANDOS LEIGH: You must show some special circumstances to take you out of the ordinary case of a landowner seeking to be heard against an abandonment bill, as in the case of the petition of Sir Michael Shaw Stewart against the *Caledonian Railway Bill*, 1869 (1 Clifford & Stephens, 21).

Coward: In this case, the petitioner has suffered special injury, from his having been

deterred from making communication by means of his intended tramway between his quarry and the Great Northern railway, and that through the conduct of the Great Northern railway company.

Pope, Q.C. (for promoters): The Great Northern Railway Act, 1880, gave the company no compulsory powers over the petitioners' land, but only power to construct the works, and to agree with the petitioner, and it was provided that, unless they did agree, they should not take his land.

Counsel: The company did not require to take compulsory powers, because they had interviews with the landowners, the result of which was that there was no opposition to the bill.

The CHAIRMAN: If the powers were only permissive it cannot be said that the company were compelled to make the railway.

Counsel: By sec. 17 of their Act of 1880 the company are liable to a penalty of £50 a day if they do not construct the line.

Pope: That cannot be so when the authorising Act provides that the company shall not construct the line except by agreement.

The CHAIRMAN: The damage the petitioner has suffered is alleged to be in consequence of the company not having made the line. The bill therefore for its final abandonment only leaves the petitioner in the position he was before, in fact it puts him in a better position, because he will now be able to make it himself; unless he can show that he can compel the company at the present moment to make the railway, in which case the bill might affect his remedy. I see no contract under which he could do so.

Mr. CHAMBERLAIN: The following seems to be the practice of the Court with reference to abandonment bills. A locus standi is not allowed against abandonment bills either on the ground of injury already sustained by the partial construction of the proposed line to be abandoned, or on account of the loss of prospective advantages to be derived, except where there has been a special agreement, and it becomes necessary to save any local rights under such agreement.

Chairman: I submit that the bill does affect the quarry owner's local rights. Besides the case of the *Great Northern Railway Bill, 1880*, those of the *South Staffordshire & Worcestershire Bill, 1886* (*Southwards*, 141 1887, App. 116) and the *Gloucester and North-Western Railway Bill, 1871* (*2 Clifford & Stephens 144*) are in my favour.

The CHAIRMAN: The letters referred to appear to be a mere statement of the company's local intentions at the time, and do not amount to an actual undertaking, and the penalties (clause 17) in the Act of 1880 would not apply,

where the company have only permissive power to make the railway.

Pope, Q.C. (in reply): If there was anything in the Great Northern Railway Act, 1880, which the petitioner could enforce against us, he might be entitled to be heard, but a reference to the Act shows that it is not so. All the works clause does is to authorise the construction of certain railways. If the petitioner were a landowner, who had consented to compulsory powers being taken over him by reason of his desire that a railway should be made, the penalty clause, which is usually inserted and which would be a general one, would enure to his benefit, and if anybody could enforce it, he would be able to do so. A landowner subject to compulsory powers could not, according to practice, appear upon a petition against the abandonment of a railway which had been authorised by Parliament. But, in this case, the Chairman of Committees of the House of Lords entertained strong objections to compulsory powers being taken for the purpose merely of a private railway, and accordingly the Act of 1880 gave the company power to make the railway; but, with reference to lands, only empowered the company to "agree with the owners and occupiers" (of whom the petitioner is one) "intended to be served by the said railways to contribute towards the cost of constructing and maintaining the said railways, or either of them, &c.: provided that the company shall not, except by agreement, enter upon, take, or use any lands, not being public roads or highways, &c., &c.," so that the position of matters was this:—The company got power to appropriate their capital to the construction of these works (without which power any shareholder could have moved the Court of Chancery to restrain them from so appropriating the capital), and they also took power to agree, if they could, with the quarry owners to contribute by guaranteeing a certain revenue, but they had no power to take an inch of land without agreement with the parties. Under these circumstances the quarry owners could not possibly have any power to compel them to make the railway. We now come for powers to abandon it, having failed to agree with the quarry owners upon the terms which would make it worth our while to construct it. All we seek by the bill is to relieve ourselves from any possible question of employment of capital in such an undertaking. If this bill were thrown out, the petitioner could do nothing to force us to make the railway to his quarry, nor move any Court to enforce penalties. In the case cited of the *Gloucester and North-Western Railway Bill, 1871*, the petitioner, Mr. Crauford, had

actually sold his land as the price of the withdrawal of his opposition, and he objected to the application of his land to any other purpose than that for which he had sold it. There is nothing in the bill that would relieve us from any liability under any existing contract; if such contract existed between the company and the petitioner he could equally sue us after the bill passes, as he could to-day.

Mr. PARKER: This Abandonment Act will relieve you from the penalty clause in the Act of 1880?

Pope: Clause 26 of the bill is substituted for it, but the petitioner does not come within it, and, therefore, has no power to sue us for penalties, not being a landowner whose land has been taken.

The CHAIRMAN: We think that the *locus standi* of the petitioner ought to be disallowed according to our settled practice.

Locus standi of William Thompson Disallowed.

Petition of (2) OWNERS, LESSEES AND OCCUPIERS, &c.

Railway Abandonment—Owners, &c., Traders and Inhabitants—Absence of Special Agreement.

The bill was also opposed by a number of persons, signing a petition as owners, occupiers, lessees, farmers, traders, and inhabitants of the district traversed by the railways proposed to be abandoned. The alleged injury was the same as in the case of petitioner (1), and the Court disallowed the *locus standi* of the petitioners upon similar grounds.

The *locus standi* of the petitioners (2) was objected to, because (1) the petitioners do not allege, nor is it the fact, that any of their lands, buildings or property can be taken under the powers of the bill; (2) the petitioners do not allege that they or any of them are the owners of any lands, &c., authorised to be taken for the railways sought to be abandoned; (3) the petitioners do not state that any contract or agreement was entered into between themselves and the promoters with respect to the construction of the said railways, but they imply without asserting that some arrangement to that effect was come to in that behalf, and that the proposed abandonment is a breach of faith. The promoters deny that they are guilty of any breach of faith; (4) the promoters deny that any arrangement was come to between the petitioners and themselves with respect to the construction of

the said railways; (5) the promoters applied for and obtained their powers to construct the said railways on the understanding that the owners, lessees, and occupiers of mines and quarries intended to be served by the said railways would contribute towards the cost of the construction and maintenance thereof, either by payment of gross sums or of annual sums in the shape of rent or guaranteed revenue, but no such contribution has been offered, and the time for the compulsory purchase of land for the making of the said railways has expired, and the promoters could not now make the same, even were such contributions forthcoming; (6) the revocation of contingent and consequential rights and benefits which the petitioners might have derived from the construction of the railways does not entitle them to be heard against the abandonment thereof; (7) farmers, traders and inhabitants of the district, through which the said railways would have passed, are not nor are any of them entitled to be heard according to practice against a bill for the abandonment of those railways; (8) the petition discloses no ground for a hearing according to practice.

Coward (for petitioners): The petition, which raises the same points as that of (1) William Thompson, is signed by 200 or 300 persons, and is headed "The petition of the undersigned owners, lessees and occupiers of property on the lines of railway hereinafter mentioned, and of owners, lessees and occupiers of property in and of farmers, traders and inhabitants of the district through which the railways were authorised to be made, and intended to be served thereby." The petitioners are not only traders but inhabitants, and there are numerous cases in which traders have been heard against abandonment bills, e.g., *North-Eastern Railway (Additional Powers) Bill*, 1874, on petitions (1 and 2), (1 Clifford & Rickards, 107).

The CHAIRMAN: In that case the railway had been at work, and there were agreements with the petitioners which would be affected by its abandonment. I do not think we have given a *locus standi* to persons in the position of the petitioners against a bill for the abandonment of powers, which, as far as we see, are not capable of being enforced by anybody. The bill does not affect the position of the petitioners; it only leaves them where they were. We must decide that they are not entitled to a *locus standi*.

Locus standi of Petitioners Disallowed.

Agents for Petitioners (1 and 2), *Simson, Wakeford, Goodhart, & Medcalf.*

Agents for Bill, *Dyson & Co.*

GREAT WESTERN RAILWAY (No. 1) BILL.

Petition of THE ALEXANDRA (NEWPORT AND SOUTH WALES) DOCKS AND RAILWAY COMPANY, AND THE NEWPORT (ALEXANDRA) DOCK COMPANY, LIMITED.

1st April, 1884.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE-PALMER, M.P.; Mr. PARKER, M.P.; Mr. BONHAM-CARTER; and the Hon. E. CHANDOS LEIGH, Q.C.)

Railway ending at Sea-shore—Apprehended Construction of Docks—Competition with existing Docks—Opposition to Bill, premature.

Against a proposed railway, ending at a point on the shore of the Bristol Channel, an existing dock company petitioned on the ground of competition, alleging that the railway company must contemplate the construction of docks at the terminus, and that these docks would divert traffic from the docks of the petitioners:

Held, on the authority of a decided case (3 Clifford & Rickards, 229) that the apprehension of injury from a scheme not contained in the bill, and which could not be carried out without the authority of Parliament, did not entitle the petitioners to a *locus standi*.

Pope, Q.C. (for petitioners): The object of the proposed line, No. 3, is to connect the Monmouthshire railways more conveniently with the South Wales line of the Great Western company. In the case of the *Cardiff and Monmouthshire Valleys Railway Bill* (ante, p. 378), the Court has decided that there already is existing competition between Risca and Cardiff and Risca and Newport, so that No. 3 line would only be an improvement of existing competition. We cannot, therefore, claim a *locus standi* in respect of that; but as to No. 5, which will run from a point east of Newport junction, on the east of the river Usk, to a point on the shore of the Bristol Channel, opposite the Alexandra docks, we say that it is not required for any immediate public accommodation and is intended to communicate with docks to be formed on the east side of the river Usk, directly opposite to the entrance to our Alexandra dock, on the west side of the Usk. Thus the promoters will be able to divert traffic from

the Monmouthshire valleys, now shipped at our docks, to their new docks when constructed. There is nothing at present at the end of No. 5 railway; and it is obvious that what is being done here is what has been done in so many instances elsewhere: the promoters are coming before Parliament with part of an entire scheme of railway and docks, the railway being the first proposed, and then they will come subsequently for a bill to utilise what is at present useless, by making docks at the end of the railway.

The CHAIRMAN: In the *Swindon, Marlborough and Andover Bill*, 1882 (3 Clifford & Rickards, 229) we disallowed the *locus standi* of petitioners under similar circumstances.

Clerk, Q.C. (for the promoters), was not called upon.

Locus Standi Disallowed.

Agent for Petitioners, *Bell*.

Agent for Bill, *Mains*.

HIGHLAND RAILWAY (NORTHERN LINES AMALGAMATION) BILL.

Petition of the GREAT NORTH OF SCOTLAND RAILWAY COMPANY.

28th April, 1884.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE-PALMER, M.P.; Mr. PARKER, M.P.; Sir JOHN DUCKWORTH; Hon. E. CHANDOS LEIGH, Q.C.; and Mr. BONHAM-CARTER.)

Amalgamation of Railways already Worked by Amalgamating Company—Termination of Working Agreement—Extension of Promoters' Railway System—Traffic Facilities under Previous Act (as between Railways of Promoters and Petitioners) how far Applicable—Insufficiency of, if Extended to Amalgamated Railways—Amendment of—Consignment of Through Traffic—Potential and Actual Competition—Distance between Petitioners' Railway and Railways to be Amalgamated—Existing Traffic and Status of Petitioners, how far Affected—Quantum of Traffic Necessary to be Affected—Practice—Locus standi, a right against Bill under consideration, independently of remedy under any other Bill for Similar Purposes.

The bill provided for amalgamating the railways of three independent companies with that of the Highland railway company, who were working the railways in question under an agreement about to terminate. The railways

in question formed together a continuous extension of the Highland railway system to the extreme north of Scotland. The petitioners, the Great North of Scotland railway company, were in competition with the promoters between certain places for traffic arising south of the railways proposed to be amalgamated, and traffic facilities clauses had been inserted for their protection in the Highland Railway Act, 1865, but they urged that those traffic facilities, even if they should be held to apply to the virtual extension of the Highland railway authorised by the bill, would be insufficient for their protection, and they complained of the power which the bill would confer upon the promoters of consigning through traffic for the south over the Highland railway system to the exclusion of their own railway, and of the monopoly that would be thus created in the hands of the promoters. It appeared, however, that the petitioners had no railways or running powers within 100 miles of the nearest point of the railways proposed to be amalgamated, and consequently no means of tapping the traffic passing over those railways, and no existing rights as to the traffic over them :

Held, that the existing *status* and interests of the petitioners were not injuriously affected by the proposed amalgamation in such a manner as to entitle them to be heard.

Per Cur.) *Locus standi* is a right against the bill under consideration independently of any right or remedy elsewhere (*e.g.*, under the provisions of another bill introduced by the petitioners for providing a remedy).

Per Cur.) To entitle a railway company to a hearing against an amalgamation of other companies, it must be able to show that a substantial amount of its traffic (say 20 per cent. of the existing traffic) would be injuriously affected.

The *locus standi* of the petitioners was objected to, because (1) no right, power, property, or interest of theirs will be affected ; (2) no such competition exists or is alleged in the petition ; (3) no such alteration of the *status* of

the petitioners will be affected by the bill, as to entitle them to be heard ; the railways proposed to be amalgamated are the Sutherland railway, the Duke of Sutherland's railway, and the Sutherland and Caithness railway. Those lines together form a continuous railway communication in extension of the Highland railway system north of Inverness, and have been hitherto worked by the promoters, the Highland company, as part of their system, and the amalgamation proposed by the bill will in no respect alter, disturb or affect the existing relations of the amalgamated companies to each other, or to the petitioners, or to any other railway companies ; (3) the powers which the promoters and the petitioners respectively possess with respect to their respective railways referred to in the petitions, were granted under, and are applicable to, circumstances entirely different from those which arise under the present bill ; (4) the petition does not show in what way the proposed amalgamation will be against the petitioners' interests, nor point out which, or allege that any provisions of the bill will prejudicially affect them ; (5 and 6) no grounds are alleged or exist, entitling the petitioners to be heard according to practice.

Saunders, Q.C. (for petitioners) : The Highland railway company is by the bill proposing to incorporate with itself all the railways north of its present northern terminus, viz., Bonar Bridge, and by so doing to monopolise the whole of the railway communication of Scotland, north of Inverness. The mileage of the present system of railways of the Highland company is 292, and they are proposing to add 110 miles of railway, bringing the total up to 402 miles. The Great North of Scotland is a line from Aberdeen to Keith junction, where it joins the Highland railway, as it also does at Elgin, north of Keith, from whence it runs to Lossiemouth, and again at Boat of Garten to the south-west, and we are this year promoting a line from Nethy Bridge to Inverness, and have already branch lines to Ballater and other places. The lines proposed to be amalgamated are the Sutherland railway, the Duke of Sutherland's railway, and the Sutherland and Caithness railway. Those three railways are now worked by the Highland railway company, but under agreements which will terminate on 1st June, 1884. Upon their termination those railways are free and under no obligation to be worked by the Highland company, so that for the purposes of argument here those railways are practically independent lines, and not allied with the Highland company after 1st June, prox., and subject to obtaining Parliamentary sanction for the purpose, might even be worked by the Great

North of Scotland company, or they might work themselves, and forward the whole of their traffic by the Great North of Scotland route, subject to the Railway and Canal Traffic Act, 1854, and the Regulation of Railways Act, 1873. Between the common points, Inverness on the north and Stanley junction on the south, there is a difference of 54 miles between the route by the Highland railway and that by the Great North of Scotland and the Caledonian railway, but that difference is scarcely worth considering in reference to traffic going south to England, for which we compete with the Highland railway company. In the case of London traffic, for instance, the difference in distance amounts to only about 7 per cent. upon the whole route.

The CHAIRMAN: It is a case of competition affected by amalgamation.

Saunders: It is a simple case of the right of one company interested in the traffic, to be heard upon the amalgamation of two or three other systems.

The CHAIRMAN: Have you at present any running powers beyond Keith in the direction of Inverness?

Saunders: The petition states that we have by agreement running powers from Nairn to Inverness. I admit that we cannot put those running powers into operation for the reason that we have not the line from Keith to Nairn, as we originally contemplated, but it was made by and is in the hands of the Highland company, who own the line from Keith to Inverness.

Mr. PARKER: Is the traffic originating north of Bonar bridge important?

Saunders: It is, especially the cattle traffic. We were heard against the Highland Railway Act, 1865, amalgamating the Inverness and Perth junction (which extended from Stanley junction to Forres), and the Inverness and Aberdeen junction (from Forres to Inverness), and Dingwall and Bonar Bridge (and the other lines east of Forres). and got facility clauses inserted for our protection.

Mr. CHANDOS LEIGH: Did the Great North of Scotland oppose the amalgamation of the Dingwall and Skye railways with the Highland railway in 1889?

Saunders: No. There has since that time been a doubt raised as to whether the facility clauses inserted in the Highland Railway Act, 1865, apply in our favour to that line, but at that time it was thought that they did apply.

Mr. PARKER: The present case seems to resemble that of the Dingwall and Skye Amalgamation.

Pope, Q.C. (for promoters): There can be no

doubt that those facility clauses would apply to any part of the system that might be amalgamated with the Highland railway, either in the past, as in the case of the Dingwall and Skye line, or in the future, as in the present case.

The CHAIRMAN: If so, would not that dispose of the case?

Saunders: No, because in the first place those facility clauses have not worked satisfactorily, and in the second place they are not sufficient to satisfy our claims to a share of traffic if the proposed amalgamation is authorised.

Pope: The Great North of Scotland in their own bill this year are proposing substantive enactments expounding those facility clauses in the sense in which they wish them to be expounded, and therein lies their remedy, but they have no right to be heard against something in which they are not interested.

The CHAIRMAN: Suppose the Court to be of opinion that the clauses do apply, would not that be a settlement of the question?

Saunders: That would be a decision upon merits, because it would be equivalent to deciding that those facility clauses are all we ought to have in the present case. What our own bill contains is not before the Court now, and we cannot be deprived of our right to appear against a bill of this character simply because we have another bill which may provide a remedy for us. *Locus standi* is a right against a particular bill, independently of any other right or remedy elsewhere.

The CHAIRMAN: I think that perhaps that is so, in accordance with the practice of this Court, as regards the question of your own bill this year.

Saunders: The joint committee on amalgamations in 1872 recommended that bills for amalgamation should be referred to a specially selected joint committee, whose duty it should be, *inter alia*, "to consider carefully what special conditions each amalgamation or transfer requires, whether for the protection of the public or of other companies. Care should be taken that no traders or other persons, who have any interest in procuring fair terms and conditions from the companies, are excluded by any rule concerning *locus standi* from appearing before such committee." That recommendation has been so far acted upon that it has been the practice of committees upon amalgamation bills to take care that all the conditions of the proposed amalgamation should be ventilated.

The CHAIRMAN: The question seems to be always whether the amalgamation will render existing competition so much more acute as to entitle the petitioners to be heard.

Saunders : That applies to potential as well as actual competition.

Mr. PARKER : Traffic for places south of Perth is the traffic in question ?

Saunders : No ; the facilities which exist now do not enable us to secure any traffic beyond Aberdeen. It is in the power of the Highland company in conjunction with the Caledonian company to carry traffic down to Stanley junction, and then take it up again from Stanley junction as far as Montrose, and it then passes over the Caledonian railway to Aberdeen. I have only referred to the facilities of 1865, in order to show that they would not be sufficient to meet the exigencies of 1884, not with a view of asking the committee to amend them, and I would undertake that we should not ask for their amendment under this bill. We have a means of doing that by a bill of our own.

Mr. PARKER : You want running powers all the way up to Thurso ?

Saunders : A petition is always framed in the largest possible way. I do not contemplate at present that we should ask for those running powers.

The CHAIRMAN : As a matter of fact you are not really nearer to any part of the line proposed to be amalgamated than the point of Elgin, and do not run westward towards Inverness further than Keith. The Highland company proposes to amalgamate some railways not nearer to you than Bonar Bridge.

Saunders : But the facility clauses in Scotland are stronger than they have ever been in England. If this Act were passed there would be nothing to prevent Mr. Pope's clients writing to us and saying, as they have with regard to the Dingwall and Skye railway, that the facility clause (Clause 82 of the Act of 1865) does not apply, because the lines amalgamated were not part of the undertaking at the time the Act of 1865 passed.

Mr. PARKER : Do you say you have no right to book over the Dingwall and Skye under the 82nd section of the Act of 1865 ?

Saunders : The officers of the Highland company say we have not. Mr. Pope says we have. The 82nd section is as follows : "The Great North of Scotland railway company shall for the purposes of all traffic whatever, whether passengers, cattle, goods, minerals, or other things, to or from or beyond any places on the railways of that company, or any railway for the time being worked by that company, from time to time, and at all times hereafter, have the right to book and invoice through and over the railways of the company such traffic as aforesaid; and the company shall, for and in

respect of all such traffic, at all times afford to and for the Great North of Scotland railway company all needful accommodations, facilities and conveniences at, on and over the lines and stations of the company by the trains of the company, and by through booking, through rates, and so far as reasonably may be through waggons and carriages and through trains, and shall at all times and in all respects conduct, forward, carry on and accommodate all such traffic on equal terms with, and as well as if it were their own proper traffic; and the company shall be bound to accept from the Great North of Scotland railway company the same mileage rate in respect of competitive traffic passing *via* Aberdeen as the company are for the time charging in respect of similar traffic passing *via* Dunkeld. Provided always, that the rates and charges shall be calculated as if the traffic passed over the shortest distance that the lines of the company and the lines of, or worked by, the said Great North of Scotland railway company in connection, would give; and out of such charges the company shall receive its full mileage proportion of the distance which the traffic passing over their railways has actually traversed; and the company shall provide all proper and needful accommodations for securing the facilities before expressed. And as respects the railways of or worked by the said Great North of Scotland railway company, the company shall have the same rights, powers and privileges in all respects in regard to all traffic whatever, whether passengers, cattle, goods, minerals or other things, to or from any places on the railways worked by them as are hereinbefore granted to that company in regard to traffic to or from their railways or the railways worked by them and the railways and stations of the company respectively." We say that is a one-sided clause.

Mr. CHANDOS LEIGH : Surely if those lines became the lines of that company they would be in the same position as the Dingwall and Skye ?

Saunders : We are not satisfied with these facility clauses for a subsequent amalgamation bill. In the 83rd section there is a very peculiar provision which has been interpreted by the Highland company in a way which we did not contemplate, and to our injury.

The CHAIRMAN : Then the question is what companies are interested. You have to show how you can be injuriously affected by the amalgamation.

Saunders : We should be prejudiced if all the traffic hereafter arising upon that gathering ground between Thurso and Bonar Bridge is destined to go over the Highland railway to

reach the Caledonian at Stanley junction and none of it comes by us.

The CHAIRMAN: That is to say, if any of it comes to you at present, and is likely to be diverted?

Saunders: I do not think I am bound to prove in the first instance that any of it comes to us now, because they have been working upon a terminable agreement which is now about to terminate.

The CHAIRMAN: Surely upon the question of whether you are injuriously affected, you must take the existing state of things?

Saunders: The existing state of law. The existing state of law is this:—We should have as much right after the 1st of June to an agreement with these companies for getting their traffic consigned by our route as the Highland company have had up to this time; we have had some of that traffic, but not as much as we think we ought to have.

The CHAIRMAN: You must have some substantial amount of traffic which the proposed change would injuriously affect.

Saunders: I do not know what this Court would hold to be substantial traffic.

The CHAIRMAN: Say 20 per cent. of the existing traffic.

Saunders: We have with great difficulty got through trains at Christmas time for the Smithfield market. In December in each year we have secured, by means of the facility clauses, through trains and through rates, and through carriages to London. We do half of the cattle traffic from Tain and that direction at Christmas time, carrying it round by Aberdeen. In like manner we could carry traffic from Thurso and Wick to London, which we should be prevented from doing if this amalgamation were passed.

Mr. PARKER: How is it that you get that traffic from Tain at Christmas time?

Saunders: It may be that some of the people who send the traffic are shareholders in the Great North of Scotland—it may be that the service is done better—there may be a block of traffic at that time upon the Highland railway. Very frequently the Highland railway is subject to snowstorms, and sometimes blocked for days together. In the public interest, it is most important that the Highland company should be prevented from accumulating the traffic at the northern end of their line or the southern end of their line, for the purpose of sending it through at the time when it suits them, when the snow block has gone. There should be provisions that the traffic should be sent on by our route in the first instance.

The CHAIRMAN: I do not think any railway company is ever supposed to represent the public interest as distinguished from its own, certainly not upon questions of competition. Can you be affected in your existing traffic by the proposed alteration?

Saunders: Surely we are not bound to prove that we have any large share of the traffic at the present moment.

The CHAIRMAN: I think the test in all these cases is this: Can the projected amalgamation injuriously affect your existing traffic?

Saunders: We are interested in the traffic at the present time. A case in point is the *Caledonian and Scottish North-Eastern Amalgamation Bill*, 1866 (Smethurst, Ed. 1867, App. 163). In the previous year the Caledonian company had amalgamated with the Scottish Central which extended as far as Perth. In 1866 they proposed to amalgamate with the Scottish North-Eastern which extended from Perth to Aberdeen. In 1865 there had been no argument upon the *locus standi* of the several companies which had then opposed the amalgamation, but before coming into committee an agreement had been come to between those companies, by which very strong facility clauses were given with regard to traffic passing over the Scottish Central for the purpose of preventing the Caledonian company securing a monopoly of the traffic upon the Scottish Central, and sending it over their own system. In 1866 the same question arose with regard to the railway from Perth to Aberdeen, but then for the first time the amalgamating companies opposed the right of the other companies to be heard. I refer also to the *Alloa Railway Bill*, 1879, on the *Petition of the East Coast Companies* (2 Clifford & Rickards, 135), and the *Alloa, Dumfermline, &c., Railway Bill*, 1883 (*Id.* Vol. III., 247).

The CHAIRMAN: The bill is only doing that by Act of Parliament which the parties have hitherto done by agreement.

Pope: The fact is, there are only two shareholders in these companies; one is the Duke of Sutherland and the other is the Highland company. Extensions are necessary, and the Duke of Sutherland is not prepared to find the money: otherwise we in all probability should work by agreement rather than amalgamate; but we come for an amalgamation rather than continue to work under agreement in order that the whole system may be carried out by the Highland company.

Saunders: Other precedents which apply here are the *Dundalk and Greenore Railway Bill*, 1873 (1 Clifford & Rickards, 9), *London and North-Western (England and Ireland) Railway*

Bill, 1874 (Ib. 93), and the Somerset and Dorset Amalgamation, 1876 (Ib. 240).

The CHAIRMAN: Each case of amalgamation depends, as competition does, so much upon its own merits and its own peculiar circumstances that you cannot very much help one case by another. The principles are quite clear. You must show that a proposed amalgamation may injuriously affect your particular line.

Saunders: These precedents dispose of the distinction which the promoters seem to draw between this and other cases, that is to say, that our line does not touch the lines proposed to be amalgamated. If we are not heard on this amalgamation, I believe it will be an unopposed bill. If we are not heard the Highland company will have an absolute monopoly as regards all traffic from Stanley junction to Thurso, and no traffic would be handed over to us, even though the Highland railway were blocked up by snow. One railway company would practically have the monopoly of half the whole area of Scotland, calculating it from north to south.

Pope (in reply): I take it that the universal principle of this Court is to give a *locus standi* to a company against an amalgamation, if it appears that that amalgamation will enable the new company to control in its own interest, differently from the method in which it can control it now, the traffic which otherwise might flow over the line of the objecting company. This bill, however, cannot so affect the traffic of the Great North of Scotland company. If the Great North of Scotland railway as an alternative route to the south, though a longer one, were at Bonar Bridge, according to practice it would be entitled to be heard against amalgamation with the Highland railway of any at present neutral line beyond it; but the Great North of Scotland railway is not within 90 miles of the lines which we propose to amalgamate, and has no power to control any traffic upon any of those lines at the present moment, separated as they are from its own railways by so large a gap. What was done in 1865 was this: at that time the line between Perth and Aberdeen was Scottish North-Eastern, and the Great North of Scotland, who joined one of the amalgamating lines at Keith and Elgin came for facilities; the Scottish North-Eastern, who joined one of the amalgamating lines at Perth, came also for facilities; and the general result was in the interests of both those companies that we were, when amalgamated, bound to exchange at equal rates with both companies, so that at this moment the traffic can pass by the Great North of Scotland *via* Elgin to Aberdeen, and so on by the Caledonian, or it may pass by Perth and the Caledonian north to

Aberdeen at equal rates in either case. Those facility clauses of 1865 have not up to this time applied to the lines now proposed to be amalgamated, because they are independent lines, but as soon as they become part of and an extension of the Highland railway they will apply, if the Courts hold that they are, in fact, such an extension. The Highland railway, as alluded to in those clauses, means the Highland railway as extended, but it is obvious that the Great North of Scotland has no interest in those independent lines on account of the wide interval between them and its own system.

The CHAIRMAN: I do not think the Court require to trouble you further. We do not think there could be such an injurious affecting here by the amalgamation as would entitle the petitioners to be heard.

Locus standi of Great North of Scotland Railway Company Disallowed.

Agents for Petitioners, *Dyson & Co.*

Agents for Bill, *Martin & Leslie.*

KINGSTON-UPON-HULL CORPORATION WATER BILL.

Petition of NEWINGTON WATER COMPANY.

6th March, 1884.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE-PALMER, M.P.; Sir JOHN DUCKWORTH; Hon. E. CHANDOS LEIGH, Q.C.; and Mr. BONHAM-CARTER.)

Water Supply, Competition as to, between Company and Local Authority—Water Company, supplying District adjacent to Municipal Borough—Municipal Boundary, recent Extension of—Proposed Extension of Water Limits—Supply by Agreement outside Statutory Limits, how far ground of Competition—Saving Clause in Act, effect of—Ratepayers, Distinct Interest of, as Shareholders in Water Company—Borough Funds Act, 1872, Effect of on Status of Petitioning Ratepayers—Public Health Act, 1875, Water Supply by Agreement under.

A water company supplied, under Provisional Order, a suburb of a municipal borough in which the corporation were also the water authority. In 1882 the municipal boundary had been extended so as to include the suburb in question, with an express saving of the company's water rights. The corporation now promoted a bill for a further extension of their water area, and for the

establishment of new water-works in a neighbouring township, part of which was within the company's statutory limits; but the bill proposed no interference with the part of the township within the company's limits. The company petitioned (1) on the ground of competition because, under the bill, they would be surrounded by the municipality and its new water area, and would thus be deprived of their present powers under the Public Health Act of supplying, by agreement, local boards and private individuals outside their statutory limits; (2) because as ratepayers within the borough, with a distinct interest from that of other ratepayers, they were entitled to oppose an expenditure upon unnecessary works, the petitioners having a large quantity of surplus water and being willing to supply it to the corporation on reasonable terms :

Held (1), that the competition alleged, affecting the company's power to supply water by agreement outside their statutory limits, was not a competition entitling the petitioners to appear; and (2) that, as ratepayers, the petitioners had no *locus standi* to be heard against a bill promoted by the corporation.

The *locus standi* of the petitioners was objected to, because (1) no land, property, powers, rights, or privileges of theirs will be interfered with compulsorily under the bill, which (2) contains no provisions for enabling the promoters to compete with the petitioners or to supply water within any part of their authorised limits without their previous consent; (3) the petitioners supply with water, under statutory powers, a district which lies partly within and partly outside the borough of Kingston-upon-Hull. The promoters are not seeking powers to supply this district with water, and the fact that the petitioners are ratepayers of the borough, or have a larger quantity of water than they require for the supply of their district, or are willing to supply the promoters with this surplus water, and other matters alleged by them, are quite irrelevant, the object of the bill being to enable the promoters to provide their present district within the borough with a more abundant supply of water, and to supply another district outside the borough, which the petitioners have

no authority to supply, and have no interest in as a water company; (4) the petitioners have no such separate and distinct interest as ratepayers from the general body of ratepayers of the borough on the subject-matter of the bill as entitles them to be heard in that capacity against the bill, which is promoted by the governing body of the borough; (5) the petitioners are not injuriously affected by the bill, and are not entitled according to the practice of Parliament to be heard against it.

Pembroke Stephens, Q.C. (for petitioners): By Acts of 1843 and 1872, the corporation of Hull obtained powers to supply the borough with water. In 1875, the petitioners, the Newington water company, limited, obtained a Provisional Order which gave them a certain area of supply. Outside this area they could supply any local board by agreement, and they did in fact supply the Newington Local Board in this outside district. In 1882, came an Act extending the boundaries of the borough of Hull, and including Newington, a part of Cottingham, and other adjoining townships. The Newington local board was thus swallowed up for all purposes, including water purposes, but by sec. 11 in the Act our compulsory area of supply was recognized; by sec. 32 all contracts with the Newington local board were made valid against the corporation of Hull, and there was an express saving clause in our favour, providing that our rights and powers should be in no way affected. Under these provisions our contract with the Newington local board is good against the corporation for the remainder of the term; our statutory limits of supply, which include a portion of Cottingham, are saved; and we have power under the Public Health Act to supply by agreement local boards in any adjoining district. The corporation now come with a bill enabling them to construct works at Cottingham, to extend their water supply to that place, and so to shut us in by their enlarged area of supply as to make it impossible for us to obtain customers outside our present boundary.

Macrae (for promoters): We are not seeking to supply any portion of Cottingham which the petitioners are authorised to supply under their Provisional Order.

The CHAIRMAN: You do not interfere with any part of the district which the petitioners are entitled to supply, but you interfere with that part which they might otherwise have an opportunity of supplying?

Stephens: They save our statutory limits, but not our agreement limits; the bill contains no saving of our rights similar to that in the Act of 1882.

The CHAIRMAN: I suppose the promoters would say that there is no necessity for any saving if they do not interfere with your statutory powers?

Stephens: There should be at least a clause preserving our status. Under the Public Health Act (s. 52), where there is already in a district a water company with statutory powers, a sanitary authority is under limitations and restrictions as to their power of supplying the inhabitants. We may not be within the letter of the provision but are within its spirit. In this case, before a local authority goes outside its district to look for a water supply, it should first exhaust all sources of supply within its district. We say in our petition that we, by a large outlay, have obtained a daily supply of from two to three million gallons per day, a quantity more than sufficient for our own district, and available for the use of 50,000 people beyond the population within our limits. We have offered to supply the corporation on very liberal terms. Why, then, having this available source at their own doors, do they propose to go to Cottingham and spend large sums there in new works? We are large ratepayers in Hull as well as in Cottingham; and we say that this proposed expenditure by the corporation is uncalled for and unnecessary, while it is an especial hardship upon us, as we shall be taxed for the new works on the one hand, and on the other shall be deprived of the power to dispose of our surplus water.

The CHAIRMAN: I do not think we can enter into your position as ratepayers. In the absence of any statement to the contrary we must assume that the corporation are promoting this bill under proper authority, and have complied with the requirements of the Borough Funds Act.

Stephens: Where a distinct interest has been shown by ratepayers, I do not know of any case in which they have been prevented from being heard because the Borough Funds Act has been complied with.

The CHAIRMAN: In your position as ratepayers, the Court are of opinion that you are bound by the act of the corporation. The only point is one of competition.

Macrae (in reply): The petitioners suggest that their power to supply water by agreement is to be treated, for purposes of competition, on the same footing with their statutory rights of supply. Such a proposition cannot be maintained for a moment; otherwise it would hardly be necessary to obtain statutory powers at all. Under their Provisional Order they obtained express statutory powers to supply a certain district. They now contend that the

Court must treat them as though they had obtained statutory powers to supply a much larger district, and to hold the whole district against competition, by virtue of this right to supply by private agreement. As to the argument that this right is affirmed by our Act of 1882, the sections of that Act which have been referred to, do not touch the question, and make no reference to this private right, but merely provide that our powers to supply water over our extended district shall not authorise us to do so within the statutory limits of the petitioners.

The CHAIRMAN: Do the petitioners allege that they supply anybody outside their statutory limits?

Stephens: There is our agreement with the Newington local board, now identified with the corporation of Hull, to supply them. Otherwise we do not carry our pipes outside our statutory limits; but the Public Health Act gives us the power to do so, and all our rights in this respect are saved by the Act of 1882.

The CHAIRMAN: You are a company, having certain statutory powers, and other powers under the General Act, to supply particular districts by agreement?

Stephens: Powers of which we shall be deprived if this bill passes.

The CHAIRMAN: All that the promoters do is to come and establish waterworks within a district which you are at liberty to supply by agreement, though it is not within your statutory limits.

Stephens: As regards our power to supply by agreement, if the bill passes we shall, in effect, be placed inside a Chinese wall, and shall be unable to get beyond it.

Macrae: As to the allegation that the petitioners are able to supply 50,000 inhabitants outside their district, the mere fact that a company can supply water beyond their own requirements cannot give them a *locus standi* on the ground of competition.

Stephens: If we have such a quantity of water as will enable us to supply 50,000 inhabitants outside our district, you deprive us of the opportunity of disposing of this surplus water if you shut us in, as the bill proposes.

Macrae: We are not interfering with the petitioners in the district assigned to them by statute.

The CHAIRMAN: Excluding local boards who might be supplied under agreement, could the petitioners supply any private individuals outside their statutory limits?

Stephens: There would be nothing to hinder us from supplying private individuals by agreement.

Mr. BONHAM-CARTER: You would have to get permission from the local authority to lay down mains?

Stephens: Yes; that must be done by agreement; but if the bill passes we shall be excluded from this source of revenue.

The CHAIRMAN: At present there is no actual supply by the petitioners outside their statutory limits?

Macrae: No; there is no actual competition.

The CHAIRMAN: We have arrived at the conclusion that there is no competition entitling the petitioners to a *locus standi*.

Stephens: You do not even think we are entitled to a *locus standi* to ask to have our status of 1882 preserved?

The CHAIRMAN: No.

Locus Standi Disallowed.

Agent for Petitioners, Gale.

Agents for Bill, Durnford & Co.

LONDON AND NORTH-WESTERN RAILWAY BILL.

Petition of (1) SALT CHAMBER OF COMMERCE OF CHESHIRE AND WORCESTERSHIRE.

28th March, 1884.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE-PALMER, M.P.; Mr. PARKER, M.P.; Sir JOHN DUCKWORTH; the Hon. CHANDOS LEIGH, Q.C.; and Mr. BONHAM-CARTER.)

Salt Wells under Railway—Railway Company restricted from Pumping or conveying Brine or manufacturing Salt—Repeal of Statutory Restrictions by Bill—Salt Trade, Representation of, by Chamber of Commerce—Brine, Property in, Analogous to Property in Underground Water—Owners of Salt Wells, Rights as to, secured by Statute—New S. O. 133a (Chambers of Commerce, &c., may be heard as to Rates and Fares).

In conformity with similar legislation in 1766 upon the construction of a canal through the salt district, the Grand Junction railway company were prohibited in 1833, by sec. 167 in their Act of incorporation, from (1) raising brine from wells beneath the land bought by them for their railway; (2) conveying it in pipes anywhere along the course of their line; and (3) manufacturing brine into salt; and if they attempted to infringe this provision, adjoining owners

were empowered to enter upon the company's land and prevent such breach without being guilty of any trespass or becoming liable to any action or suit. The London and North-Western railway company now promoted a bill which proposed to repeal this restriction, substituting another which left the company free to raise the brine and manufacture it into salt, and also allowed them to convey it in pipes along their line within the salt district. The bill was opposed by the Salt Chamber of Commerce of Cheshire and Worcestershire, who claimed to represent the whole salt trade, and whose *locus standi* was therefore free from the objection that they were a general body not representing a specific interest. The promoters contended that sec. 167 in the Act of 1833 was intended for the protection of adjoining owners whose lands were taken for the purposes of the railway; that those owners had petitioned, their *locus standi* being admitted; and that the Chamber of Commerce representing the whole salt district were not entitled to appear to prevent a local injury. It was conceded that, by pumping brine at any one point, the underground stock throughout the whole district might be affected; but it was argued that owners of the land now occupied by the railway would have been at liberty to pump, whatever the consequences elsewhere, there being no property in underground brine, and that therefore the issue was between the railway company and the adjoining owners who had parted with their land:

Held, however, that the Chamber of Commerce were entitled to appear against the clause repealing the legislation of 1833.*

* And now see the new S. O. 133a, mentioned by the Chairman:—"Where a chamber of commerce or agriculture, or other similar body, sufficiently representing a particular trade or business in any district to which any railway bill relates, petition against the bill, alleging that such trade or business will be injuriously affected by the rates and fares proposed to be authorised by the bill, or is injuriously affected by the rates and fares already authorised by acts relating to the railway undertaking, it shall be competent to the Referees on private bills, if they think fit, to admit the petitioners to be heard, on such

The *locus standi* of the petitioners was objected to, because (1) the only persons entitled to be heard are, if any, H. E. Talk and John Moore, but they sign the petition not on their own behalf but as president and secretary respectively of the Chamber of Commerce, and they are not entitled to be heard either on their own behalf or as representing the chamber; (2 and 3) the petition does not show that the persons signing it, or the chamber, have any such interest in clause 62 of the bill as entitles them to be heard; (4) the petitioners complain that the repeal of sec. 167 in the Act of 1833 would enable the promoters to pump up brine and convey it away in pipes along the railway, a proceeding which it was the object of that section to prevent. But, on the contrary, clause 62 in the bill, while repealing some parts of the section in question, re-enacts and preserves that portion against the repeal of which the petition is directed; (5) the petition discloses no ground on which the persons signing it or the Chamber of Commerce can be heard according to practice.

Pember, Q.C. (for petitioners): The Salt Chamber of Commerce are the organised association representing the salt manufacturers in England, thereby differing essentially from general chambers of commerce, which do not represent a particular industry, and hitherto, therefore, have failed to obtain a *locus standi* against bills in Parliament. The pumping of brine for the manufacture of salt in Cheshire is confined to limited districts at Northwich, Windford, Middlewich, and Wheelock; and formerly all the salt manufactured in these districts was conveyed away by the river Weaver, or by the Trent and Mersey canal. When Parliament, in the year 1766, granted powers for the construction of the latter canal, a clause was inserted in the Act "for the preservation of salt works," to prevent brine pipes being laid in, upon, or under any part of the lands taken by the canal company, so that the brine could not, by means of the canal, be conveyed away from the districts where it was purified. In 1831, a similar provision was

enacted upon the consolidation of the Acts relating to the Trent and Mersey canal; and in 1833, sec. 167, to the like effect, was inserted in the Grand Junction Railway Act. Parliament, therefore, when it sanctioned these Acts foresaw that such canals or railways might easily monopolise and ruin a limited trade like the salt trade by taking brine out of the salt districts. The promoters now wish to repeal sec. 167 in the Grand Junction Railway Act, thus depriving us of the protection hitherto afforded by Parliament, and exposing us to the risk of a most serious injury.

The CHAIRMAN: Do the promoters contend that the petition is not regularly signed?

Pope, Q.C. (for promoters): The Court may take the petition as being regularly signed, but we deny that the Salt Chamber of Commerce can be taken to represent the salt trade.

Pember: The petition is signed "H. E. Talk, president; John Moore, secretary. On behalf of the Salt Chamber of Commerce of Cheshire and Worcestershire. In pursuance of a resolution of the said chamber at a special meeting thereof, held on the 13th day of December, 1883." Sec. 167 of the Act of 1833 provided that the company, their successors or assigns "shall not sink for, raise or get any brine or rock salt in or out of any of the lands or grounds" of the railway, nor carry nor convey in pipes, troughs or soughs to be laid in, upon or under any part of their lands, "any brine for the making of salt, or permit any other person or persons so to do, or erect or make any buildings for the making or manufacturing of salt in or upon such lands:" and in case of any attempt by the company to sink pits, the owners of adjoining lands were empowered to enter and obstruct and prevent the same, without being guilty of any trespass, or liable to any action or suit for so doing. The company, therefore, were forbidden to do three things: to get, to carry, or to manufacture. For this provision they now propose to substitute the following:—"The company shall not convey or authorise or permit to be conveyed in any pipe, trough, sough or like work in, upon or under any part of the railway or lands of the company . . . any brine for the making of salt in any district or place other than and beyond the district or place in which salt is now made;" and when the company offend in this behalf adjoining owners are authorised to interfere as before. By this provision, two out of the three restrictions imposed in 1833 will be removed, and the third will be modified, for whereas the existing limitation as to removal of brine is an absolute one, without reference to district, the company, under clause

allegation against the bill, or any part thereof, or against the rates and fares authorised by the said Acts, or any of them:

"The provisions of this Order relative to rates and fares already authorised extend to traders and freighters, and to a single trader, in any case where a *locus standi* would have been allowed to them or him, if this Order had not been made:

"Nothing in this Order shall authorise the Referees to entertain any question within the jurisdiction of the railway commissioners."

62, will only be restricted from conveying the brine "for the making of salt in any district or place other than and beyond the district or place in which salt is now made." It is essential that the pumping of brine from point to point in the salt district should not be allowed unnecessarily, because the underground conditions are such that if the London and North-Western railway company were entitled to pump up brine and send it to another part of the district, they might deprive adjoining owners of their brine and give it to somebody else. We are now protected by a proviso that the railway company shall not convey brine at all. They are asking for a power to convey it anywhere within the salt district; and they would, for the first time, be able to abstract the brine themselves, and even to manufacture salt, as far as the special Act is concerned, though there might be a question whether their doing this would not be *ultra vires*. This change affects the salt interest, and we represent that particular trade and no other, a material distinction, as the reported cases show.

The CHAIRMAN: Our practice establishes the rule that where petitioners sufficiently represent a particular trade or interest, they are entitled to be heard.

Mr. BONHAM-CARTER: You claim the same position as the Mining Association of Great Britain?

Pember: Yes; there is no other organised association representing the trade; sec. 167 was put in for our protection in 1833; and we are the persons interested in seeing that no outsiders pump away the brine, and so reduce the general stock in the bowels of the earth, for it is proved that if you tap the brine at Northwich the stock is affected at Winsford.

Pope (in reply): The petitioners are asking you to give legislative force to a marginal note in the Act of 1883. It is true that the marginal note to sec. 167 says "for the preservation of salt-works." But a marginal note is no part of the Act. It is plain that the section itself was intended not for the general protection of salt-works in the district, but for the protection of the proprietors for the time being of the lands adjoining the railway. Those proprietors are petitioners now, and their *locus standi* is not disputed. It is the fact that, according to modern opinion, the brine springs run in courses all over the district, and that to pump one well will lower the supply all over the district. But the proprietors, whose lands were taken for the purposes of the railway in 1833, would have had the right to sink wells on their lands and to pump the brine, whatever the consequences to the adjoining district.

The CHAIRMAN: The law makes no distinction between underground brine and underground water?

Pope: No. We tried to obtain an Act three years ago to create the distinction, upon the ground that, though "Chasemore and Richards" and other cases decide that underground water which has not acquired a defined channel is property common to all owners of land, underground brine is water which, having percolated into the salt deposits, dissolves and takes away part of the solum. Parliament, however, refused to give us any remedy.

The CHAIRMAN: You contend that sec. 167 was meant to protect a particular class, and not the whole district?

Pope: Yes, that is our first point. Our second is, that we do not propose such a modification of sec. 167 as will affect the trade generally. The interest of the general trade is that brine should not be carried out of the district, and we do not propose to carry it out of the district. Our third point is that a chamber of commerce which professes to represent the whole trade, wherever distributed, cannot properly claim to represent a local interest and a local injury.

The CHAIRMAN: We think it would be the safer course in this case to allow the *locus standi*. We think the Salt Chamber of Commerce do sufficiently represent the salt interest of the country. They allege that they are the organised association representing the salt manufacturers in England, and the petition is signed by the president and secretary on behalf of "the Salt Chamber of Commerce of Cheshire and Worcestershire." We shall not be stretching our decisions very far if we hold that that is sufficient to establish the fact that they represent the salt manufacturers in the district. The proposed Standing Order, which would certainly admit the petitioners as a chamber of commerce has not yet passed, but the Court ought to consider that the House of Commons has come to a resolution to that effect, and therefore if we have any doubt at all, we should give to the petitioners the benefit of that doubt. As to sec. 167 in the Act of 1883, we think its construction sufficiently doubtful to justify us in saying that the petitioners ought to be heard. I suppose there is no question how far the *locus standi* should extend?

Pope: The petition is solely against clause 62.
Locus Standi Allowed against clause 62.

Agents for Petitioners, Dyson & Co.

PETITION OF (2) STEAMSHIP OWNERS ASSOCIATION
AND IRISH STEAMSHIP OWNERS' ASSOCIATION.

Steamboat Powers of Railway Company—Proposed to be made Perpetual—Steamship Owners' Association opposing—Competition, Sea—Public issues arising on Petition—Practice—Allegations in Petition, Sufficiency of—S. O. 156 and 162 (Steamboat Powers, &c., in Railway Bills)—Railway Commissioners, Absence of Powers as to Steamboat Traffic—Railways Clauses Act, 1863, Part IV.

A railway company owning and running steamers, which traded between ports on either side of the Irish channel, promoted an omnibus bill by which their steamboat powers, hitherto terminable, would be made permanent. Two steamship associations, one of them an Irish association, had on former occasions been admitted to oppose the steamboat powers of the company, and now once more petitioned, but failed to specify any distinct interest in the cross-channel traffic contemplated by the bill, except by their allegation that fair terms should be secured to independent steamship owners for traffic conveyed by their steamers in connection with the company's railway. For the promoters it was contended that this allegation showed no sufficient interest in competitive traffic between the ports specified in the bill, and that the considerations of public policy raised in the petition were matters for Parliament to discuss on the second reading, and not for the Committee :

And, though with hesitation on account of the vagueness in their allegations, which showed no distinct injury resulting to them under the bill, that the *locus standi* of the petitioners should be allowed.

The *locus standi* of the petitioners was objected to, because (1) the only provision of the bill to which they object is clause 59, which proposes to extend and make permanent certain powers now vested in the promoters with respect to the owning and using of steam-vessels. But those powers are limited to the owning and using of steam-vessels between Holyhead and Dublin,

and Greenore and other ports in the Lough of Carlingford, and it is not alleged that the petitioners use steam-vessels between those ports or any of them, or that in the way of competition or in any other way they have such an interest in the subject-matter of clause 59 as entitles them to be heard against the bill; (2 and 3) no ground is alleged or disclosed which, according to practice, entitles them to be heard.

Pembroke Stephens, Q.C. (for the petitioners) : Clause 59 of the bill provides that the powers of the company under or by virtue of certain Acts there recited, which gave them powers for a certain limited term for "the purchase, hire, building, using, and owning of steam and other vessels," should be extended and made permanent. Bills of this nature belong to a special class, and special rules of the House are applicable to them, *e.g.*, S. O. 156 and 162.

The CHAIRMAN : The power sought is only an extension of existing powers ?

Stephens : Yes, but an extension in perpetuity. Once given, the company need never come before Parliament again for their renewal, no matter whether they make a good or a bad use of these powers. Now, therefore, is the only time for any persons interested to step in. Next year these powers would cease absolutely. This is not, therefore, merely a continuance bill, but a re-grant, and a re-grant *en bloc* of all the powers given in all the Acts under which the company have acquired or have inherited steamboat powers. The Railway Commissioners' code is not applicable to steamboats, and, therefore, there is no remedy against railway companies as steamboat owners. If the bill had incorporated Part IV. of the Railways Clauses Act, 1863, we should have had some protection, for then the Board of Trade would have a periodical revision and control of these powers. If we are not heard there will be no one before the Committee to show how the interests of steamship owners and others will be affected by the bill.

The CHAIRMAN : The petition does not allege that the petitioners are distinctly interested in the cross-channel traffic which would be affected by clause 59.

Pope, Q.C. (for promoters) : That is our objection.

Stephens : This is a general association formed to watch the interests of steamship owners generally, but among its constituents are the Drogheda steamship company, the Dundalk and Newry steamship company, and the London steam-packet company. The petition says that the association represents a large portion of the steamship owners of the United Kingdom, and has frequently had occasion to oppose bills introduced by railway companies seeking

powers to own and use steam-vessels, with the result that, in every instance, such powers have been limited in respect of time or scope, or made subject to review from time to time.

The CHAIRMAN: It would be quite consistent with that allegation if none of the petitioners were interested in the cross-channel traffic.

Stephens: According to practice, it would not be necessary to make such an allegation. The petition goes on to say that in their successive Acts of 1848, 1855, 1861, and 1870, the steamboat powers of the London and North-Western company have always been limited to a given period; and we wish to urge that Parliament should now take the same course, reserving to itself the right to review the conduct of the company in the exercise of those powers, and to protect independent steamship owners. Unless the company are put under some control, they may encourage traffic to seek one port instead of another; they may give more conveniently-timed trains; they may afford facilities, and do many things which, in the eyes of the Railway Commissioners (though the steamship owners are precluded from going before them), would amount to undue preference. Unless we are allowed to appear now, we can never, as the petition urges, take any steps to secure to the independent steamship owners fair terms for traffic conveyed by their vessels in connection with the company's railways. An early case of 1865 shows that there need not be an allegation of interest in specific traffic.

Pope: In 1870 you were allowed to oppose, but that was upon a petition containing the very allegations which are absent in this, *London and North-Western Railway (Steam Vessels) Bill*, 1870 (2 Clifford & Stephens, 65).

Stephens: In the *Aberystwith and Welsh Coast Railway Bill*, 1865 (Smeth., Ed. 1876, p. 78), petitioners were allowed a *locus standi* notwithstanding the absence of such an allegation. I refer also to the *Lancashire and Yorkshire and London and North-Western Steamboats Bill*, 1870 (2 Clifford & Stephens, 59), where the association now petitioning were allowed a *locus standi*. We have been heard upon proposals to take steamboat powers for a limited period: *a fortiori*, we should be heard when these powers are to be perpetual.

The CHAIRMAN: In the cases in which you were heard the bills may have specially affected you, and your petitions may have alleged that you were interested in the particular traffic covered by these bills. In this case, for all that is to be gathered from the petition, you may be owners of steamboats plying on the east coast, and may own none on the west.

Stephens: Unless we are heard, how is the Committee on this bill to comply with the S. O. and give reasons for passing the bill? In our absence such reasons must be one-sided. No railway company has hitherto ventured openly to propose that all their steamboat powers should be made perpetual.

The CHAIRMAN: It may be that the question should be raised; the point is, do you show that you are the proper persons to raise it?

Mr. PARKER: In your petition you say that provision should be made to secure "to independent steamship owners fair terms for traffic conveyed, or intended to be conveyed, by their steam vessels in connection with the railways of the North-Western company."

Stephens: Yes, I rely upon that allegation. In 1873 we were heard notwithstanding the fact that we had no vessels running to Greenore, which was a London and North-Western port. Competition at sea affects wide areas.

Pope (in reply): In the paragraph just quoted there is no allegation that any of the petitioning companies own steamboats by which traffic conveyed or intended to be conveyed in connection with our railways could possibly pass. In 1870 the petitioners' *locus standi* was allowed on the ground that, although they did not allege that they owned steamers plying between the exact ports which were the subject-matter of that legislation, still they did distinctly allege that they owned competitive lines of steamers between other ports, namely Liverpool and Dublin, as opposed to Holyhead and Greenore. Here there is no such allegation: all that is urged rests on general policy. But the proper stage to urge those conditions is the second reading of the bill. Parliament, and not the Committee, must decide such issues. This petition does not allege competition; it does not set out any interest whatever other than that of the general public.

The CHAIRMAN: We think it safer in this case to allow the *locus standi*, but we do so with hesitation on account of the vagueness of the petition. If we have another petition like this we shall have great difficulty in allowing the petitioners to be heard upon it. The public considerations involved in the issue here raised have not been absent from the minds of the Court in arriving at this decision.

Locus standi Allowed against clause 59, and so much of the preamble as relates thereto.

Agents for Petitioners, *Grahames & Co.*

Petition of (3) EDMUND RALPH VERNON.

Street, Stopping up and Diversion of—Owner of House Property, Petition of—Special Damage.

Absence of, through Diversion of Road—Local Board, Representation of Owners and Occupiers, by—Depreciation of Property.

An owner of property in and near a street which was proposed to be stopped up and diverted by a railway company, petitioned against the bill, on the ground that his property would thereby be depreciated in value. The local board approved of the bill:

Held, that as the petitioner showed no special injury arising to his property from the proposed diversion (as for example, interference with access to business premises) he was represented by the local board, the general depreciation in value which he alleged being an injury which he would sustain in common with all other owners and occupiers in the streets affected.

The petitioner's *locus standi* was objected to, because (1) no land or property of his will be taken or interfered with; (2) he has not the control or management of the public highways, Rolfe-street, Brass-street, and Brass-house-lane; (3) he has no greater interest in these highways than the general public using the same and is not entitled to be heard either on his own behalf or as representing the public; (4) the apprehended injury to his estate and the inconvenience to his tenants is not a ground on which he can be heard; (5) the local board of Smethwick, as the local authority, are the proper parties to be heard in respect of the highways in question, and they assent to the bill; (6) no ground is alleged upon which, according to practice, the petitioner can be heard.

Vernon: Clause 3 of the bill proposes to stop up, discontinue, and appropriate in Smethwick parts of Rolfe-street and Brass-house-lane, and to construct a foot-bridge at the level crossing at that point. I own freehold property in Brass-house-lane and St. George-street, about 300 yards from the level crossing, and also freehold property in High-street-west, 100 yards distant. Upon the land bought by me in Brass-house-lane I built houses on the faith of its remaining an independent thoroughfare into High-street, and that property there would improve in value. The stopping up of Brass-house-lane and the diverting of it into Rolfe-street will seriously depreciate the present and future value of this property, and will draw away the traffic into Rolfe-street, thus depriving

my tenants of customers, and compelling me to accept reduced rentals. I waited on the local board, who failed, however, to oppose the bill. I have also written to the Local Government Board, and afterwards the promoters modified their plan.

The CHAIRMAN: We assume that the local board are in favour of this scheme. You must show us that for this particular purpose the local board does not represent you, and that you are in a different position from that of other owners and occupiers in these streets.

Vernon: Had the local board proposed to stop up this road I should have been heard under the Highways Act, and an enquiry would have been held by authority of the Local Government Board. I am deprived of that remedy by the proposal to take these powers and by the acquiescence of the local board. I do not allege that I am in a different position from other owners and occupiers in the same streets. A case which seems to apply is—*Lancashire and Yorkshire Railway (New Works) Bill, 1871, Petition of Messrs. Ellis (2 Clifford & Stephens, 173)*.

The CHAIRMAN: Your difficulty here is that no access to business premises will be stopped under the bill.

Rickards (as amicus curiæ) cited *London & South-Western Railway Bill, 1883, Petition of George Burton (3 Clifford & Rickards, 313)*.

Pope, Q.C. (in reply): If the petitioner could show any special injury to his property or business through the proposed diversion, he would be entitled to a *locus standi*; but he alleges no injury, except that which he may suffer in common with the rest of the public, and as one of the public he is represented by the local board.

The CHAIRMAN: According to the established practice in this Court we cannot allow the petitioner to be heard, or we should be obliged to allow every inhabitant in the town to be heard. For the purposes of the bill the petitioner is represented by the local board.

Locus Standi Disallowed.

Petitions of (4) USK AND TOWY RAILWAY COMPANY; (5) CENTRAL WALKS AND CARMARTHEN JUNCTION RAILWAY COMPANY.

Railway, Lease to Two Companies for 999 Years—Vesting of Undertaking in One Company—Running Powers—Single, substituted for Double Service of Trains—Traffic of adjoining Lines, affected by Transfer—Railways Clauses Act, 1863.

The Vale of Towy railway was leased for 999 years jointly to the London and North-Western and Great Western companies. With the assent of the Great Western, a bill was now promoted by the North-Western company, transferring the undertaking to them solely, and vesting it in them, but reserving all the rights of third parties under the lease. Two adjoining railway companies having running powers over the Vale of Towy line, petitioned on the ground that their traffic would be at a disadvantage, and the accommodation afforded would be less, when one company worked the line instead of two, and one set of trains only ran over it. They also alleged that the new arrangement between the North-Western and Great Western was made with a view to send certain traffic by a circuitous route :

Held, that in neither case was the petitioning company entitled to a *locus standi*.

The *locus standi* of the Usk and Towy railway company was objected to, because (1) the Vale of Towy railway is at present leased to the promoters and the Great Western railway company for 999 years, and the vesting proposed by the bill is subject to that lease, and does not practically alter the ownership, control, working, use, or arrangement of the Vale of Towy railway ; (2) neither the interests nor the powers of the promoters in respect of the use and working of the Vale of Towy railway, or of the traffic passing thereon, or on the petitioners' railway, or in respect of the diversion or direction of traffic from or into any particular route, will be altered or affected by the transfer and vesting sought by the bill so as to entitle the petitioners to be heard against the proposed vesting ; (3) the petitioners' rights under their several Acts, and particularly the power to run over portions of the Central Wales Extension railway and the Vale of Towy railway, and their right of access to the Llanelli railway and dock undertaking are not in any way annulled, altered or prejudiced by the proposed vesting ; (4) the promoters deny that the proposed vesting will have the effect of putting any further block than at present exists (if any) between the petitioners' and any other railway, or that it will in any way frustrate or impede the fulfilment of the object of the petitioners' railway ; (5) the petitioners fail to show that they have any such interest in the bill as entitles them to be heard in

respect of traffic and other facilities and free access to the Vale of Towy railway ; (6 and 7), no case of competition or interference with competition and no other ground is shown, entitling the petitioners to be heard.

The *locus standi* of the Central Wales and Carmarthen Junction railway company was objected to on similar grounds, and because (3) if the petitioners have any rights over or in respect of the Vale of Towy railway (which the promoters deny), those rights are reserved by the provisions of the Railways Clauses Act, 1863, which is incorporated with the bill.

Batten (for both petitioners) : Clause 55 and following clauses propose to vest in the London and North-Western railway company the Vale of Towy railway, which runs from Llandovery to Llandilo. The Usk and Towy company, who now petition, are authorised to make a line running from Devynock to Llandovery, with running powers over a portion of the Vale of Towy railway between our terminus and Llandovery. Our line is not yet made, but in this Session we are seeking powers to run over other portions of the Vale of Towy into Llandilo and also between Devynock and Brecon. At present, over the Vale of Towy system, there is a double service of trains, Great Western and North-Western ; and the Great Western would be bound to quote rates and give facilities and through tickets from any of their stations west of Carmarthen, to, say, Hereford, over the Vale of Towy, as being the shortest route. So long as the Vale of Towy remains a separate concern, and the Great Western occupy it jointly with the North-Western, the Great Western are bound to keep up a separate service, and the Vale of Towy line, therefore, enjoys a double service. But by vesting the line in the North-Western solely, the Great Western retire from the district, and under certain arrangements with the North-Western they will carry traffic round by a circuitous route, avoiding the Vale of Towy line altogether, and thereby depriving us of a considerable advantage. The sole object of the bill is to block the traffic upon this route in order to carry out the agreement between the two companies that the whole of the traffic west of Carmarthen shall be sent not by this near route, but by the longer route round. The Midland company at the present moment, in the exercise of their running powers, are running several trains from Hereford to Devynock, where our line commences, so that the position which we should be in if Parliament were to grant to the North-Western company the right to become the owners of this Vale of Towy, and

so enable the Great Western company to retire, would be this: the Midland trains which would come down to Devynock and be taken on by us to Llandovery would only find half the number of trains a-day to take passengers on to Carmarthen, who would therefore go by the longer route on account of the delay.

Mr. BONHAM-CARTER: Do the Great Western company petition?

Pope, Q.C. (for promoters): The Great Western company are petitioners and their *locus standi* is not disputed.

Batten: The Great Western company nominally oppose, but they agree to retire. The two companies are here stifling the Vale of Towy line in order that the traffic shall be taken 50 or 60 miles round.

Pope: The Vale of Towy being leased for 999 years to the London and North-Western and the Llanelly company (now Great Western), we propose as a mere domestic matter to change our 1,000 years' lease into an ownership, reserving expressly all the rights of all the parties under the lease.

Batten: In a case last year in which the London and South-Western company sought to amalgamate the Bodmin and Wadebridge, stating that they already had all the capital in the Bodmin and Wadebridge, and it was nothing but a change of name, the Court nevertheless held that it was a case in which adjoining railway companies had a right to be heard (3 Clifford & Rickards, 306). Parliament in effect said last year that the London and North-Western and the Great Western companies should facilitate traffic by this route, but the North-Western company will oust their partners from their present position, so that the Great Western will be able to say "We do not go to Llandovery." If nothing is obtained by the change of ownership, why make the change? The promoters say that they are not altering the ownership, control, working, use or management of the railway. But they alter it from a joint lease, in which state of things we can go and make our bargain with one or the other, to sole ownership, under which state of things they will be able to choke the traffic which Parliament has declared shall go by the nearest route. As to the other petitioners, the Central Wales and Carmarthen Junction railway company, their junction commences at the other end of the Vale of Towy railway, and very much the same state of things arises as in the case of the Usk and Towy, except that in this case you have a completed railway. Under the powers of an Act of last Session these petitioners obtained certain facilities, namely, that the Great Western company should quote

rates and give facilities and through tickets from all their stations west of Carmarthen over the petitioners' railway on all stations on the Great Western railway east of Llandilo.

Mr. CHANDOS LEIGH: Will that state of things be interfered with by this bill?

Batten: Yes. Take Haverford West, which is a pure Great Western station, to Llangadock, which is a mixed London and North-Western and Great Western station on this Vale of Towy. At present the Great Western company are bound, if any person requires goods to be sent from Haverford West to Llangadock, to take them over the Vale of Towy to Llangadock because they are in use and occupation of the Vale of Towy.

The CHAIRMAN: How does the bill affect that position?

Batten: Because when the ownership of the Vale of Towy railway comes into the hands of one of the parties who have agreed to divide the traffic and not to carry it by this route, the Great Western will be able to retire from the district, and not carry the traffic.

Pope, Q.C. (in reply): At present the Usk and Towy, one of the petitioning companies, is an authorised railway, the powers to construct which no longer exist, but which is in Parliament this Session with a bill to revive its powers of construction, and give it running powers to Llandilo and to Brecon. If those powers are not given by Act of Parliament this Session there will be no Usk and Towy.

Batten: The petitioning company have bought their land; their powers have not expired, and their seal is in existence.

Pope: No doubt; but they have no power to do anything. The position of the Vale of Towy is this: It is a line at present owned by a company called the Vale of Towy company, and is leased for 999 years jointly to the London and North-Western and the Great Western companies. We are proposing not in any way to interfere with the obligations either of the Great Western or of the Vale of Towy itself to any outside companies, but to change the name of the Vale of Towy company into London and North-Western company, at the same time keeping alive, for the benefit of the Usk and Towy or any other company interested in it, all the obligations under the lease, either of the parties to the lease or of the Vale of Towy company, which would otherwise be extinguished when this Act passed. It is purely a domestic arrangement between the Great Western and the London and North-Western as to the ownership of the line and rails upon which the traffic runs. We should have no more power hereafter to interfere with the conditions and obliga-

tions of that lease for 999 years than the Vale of Towy would themselves; we should be exactly under the same obligation to everybody that the Vale of Towy are. I cannot conceive what the petitioners mean about running by a circuitous route.

[*He was then stopped.*]

The CHAIRMAN: We do not think there is any ground for a *locus standi* in either of these cases.

Locus standi of both petitioners *Disallowed.*

Agent for Usk and Towy Railway Company, *Bell.*

Agent for Central Wales and Carmarthen Junction Railway Company, *Noyes.*

Petition of (6) OWNERS OR LESSEES OF MANUFACTORIES OR WORKS, AND TRADERS IN WIDNES.

Rates for Fuel on Railway—Company's Waggon v. Owners' Waggon—Increased Charge for Fuel carried under 50 Miles in Company's Waggon—Traders and Freighters and Manufacturers—Railway and Canal Traffic Act, 1854—"Reasonable Facilities," whether including Right of Traders to Supply Waggon.

A railway company proposed a clause enabling them to increase their charges for conveying coal and other fuel for distances under 50 miles, if in their own waggon. The clause was opposed by manufacturers using coal brought to their works from collieries within this distance. It was objected that, as the railway company were under no liability to provide waggon, and similarly as traders were not obliged to use the company's waggon, the petitioners would suffer no prejudice from the proposed change of rate, and had no interest entitling them to appear:

Held, that the change of rate proposed was sufficient to give the petitioners a *locus standi*.

The *locus standi* of the petitioners was objected to, because (1) the clause complained of applies exclusively to cases in which the promoters provide waggon or carriages for the conveyance of the articles specified, and the petitioners do not allege that any of them convey, or receive, or are otherwise interested in any of those articles; or if they have any

such interest in the articles so conveyed, the petitioners do not show that such articles are conveyed in waggon provided by the promoters; (2) the promoters are not now, nor would they be, if the clause passed into law, under any obligation or liability to provide waggon or carriages for the purposes of the clause; nor, on the other hand, are the petitioners under any obligation or liability to use waggon or carriages so provided, and therefore the petitioners have no such interest in the subject-matter of the clause as entitles them to be heard; (3) the petitioners allege no ground upon which, according to practice, they can be heard against the bill.

Hunter (for petitioners): By clause 60 the company take powers "to demand and receive in lieu of any other payment, charge or remuneration which, under 9 & 10 Vict., c. 204, they are entitled to demand and receive in respect of waggon or carriages provided by them for the conveyance of fuel, such as coal, cannel, slack, culm, and coke, where the same are conveyed for any distance not exceeding 50 miles, any sum not exceeding sixpence per ton." At present, under the Company's Act of 1846, they may charge for every mile 1½d. per ton if carried in their waggon, and 1d. per ton if carried in owner's waggon. Thus the charge for the use of the company's waggon is an eighth of a penny per mile; and as, for distances under 50 miles, they are entitled to charge one mile as six, the charge for waggon would come to six-eighths of a penny per ton, but, under clause 60, the company would receive sixpence. The petitioners say that they consume many hundreds of thousands of tons of fuel every year, almost the whole of which is brought over lines belonging to the company from collieries at less than fifty miles distance; and if the proposed clause passes, the company's maximum rates would be greatly increased, and would be a great hardship upon them. The promoters object that, as we do not now use their waggon, we are not interested in this proposal, and are not prejudiced by it. But traders have no inherent right to insist on providing their own waggon; they can only rely on the general words in the Railway and Canal Traffic Act, 1854, declaring that a railway company shall afford reasonable facilities for receiving, forwarding and delivering traffic; and upon any application to the Railway Commissioners, it would be for them to decide whether the right of owners to use their own waggon was such a reasonable facility. The proposed charge would amount to an increase of about threepence per ton upon the present cost of carrying our fuel.

Pope, Q.C. (for promoters): No doubt clause

make a change in the power of the company to charge for the use of waggons, and that the company are under no obligation to provide waggons, the question is, whether the petitioners have such an interest in the rate of charge as entitles them to be heard. That Parliament should not be asked to make this alteration until the whole subject of charges and the re-classification of waggons is fully investigated. The petitioners do not allege that these would be increased charges, but that they should not be heard until there has been some general consideration.

CHAIRMAN: We think there may be a change here to entitle the petitioners to be heard.

locus standi Allowed against clause 60.

for Petitioners, H. E. Brown.

OF (7) OWNERS, LESSEES AND OCCUPIERS OF HOUSES AND OTHER PROPERTY IN WAVERTREE.

Sidings—Provision Prohibiting Sidings on Certain Sites—Repeal of Statutory Restriction on Owners, Lessees and Occupiers coming of Residential Injury.

At the instance of owners and others residing in Sandown-park, near Liverpool,

the London and North-Western railway company were prohibited, by sec. 39 in their Act of that year, from making certain sidings which would have depreciated the value of property in Sandown-park. The company had recently made the sidings, but were prevented from using them by the Act. They now promoted a bill to repeal the section. Besides the owners, residing in Sandown-park who had obtained an injunction, and whose *locus standi* was admitted, a petition was presented by other neighbouring owners, lessees and occupiers of property, as they alleged, would be injured by such repeal. Sec. 39 did not show that it was made for the special protection of persons residing in Sandown-park, and the petitioners contended that they also were entitled to the benefit of the section. It appeared, however, that the land of the railway company, which was nearest to their houses, and upon which sidings had been placed, was land

specially excepted by proviso from the prohibition in question:

Held, upon these facts, that the petitioners were not entitled to a *locus standi*.

The *locus standi* of the petitioners was objected to, because (1) no land, &c., of theirs will be taken or used, and their allegations of consequential injury do not entitle them to be heard; (2) they do not allege or show that they are owners, lessees or occupiers of any of the lands referred to in sec. 39 of the London and North-Western Railway (Lines near Liverpool) Act, 1861, and it does not appear that they have any interest in these lands entitling them to appear; (3) they show no ground upon which they can be heard according to practice.

Sutton (for petitioners): We seek to be heard against clause 4, which will enable the company to make two junctions, No. 1 and No. 5, called the Edge-hill junctions, and, notwithstanding sec. 39 in their Act of 1861, to lay down and construct sidings and other works in connection with these junctions. Sec. 39, here referred to, prohibits the company from constructing any sidings upon certain lands numbered 5, 6, 7, 9, 10, on the deposited plans, with a proviso that nothing is to prevent the company from constructing certain lines of railway, with a reasonable amount of sidings, upon the lands numbered 2, 3, 5, 6, 7, 14 and 15. The petitioners own, lease and occupy houses and other property in Dryden-road, adjoining Pighue-lane, and the proposed junctions will be formed for a considerable distance along the south side of this lane, and will be in close proximity to the petitioners' houses, which, as they say, will thereby be most injuriously affected by the incessant noise and vibration, night and day, in shunting and arranging trains upon the proposed sidings. Sec. 39, which the company now seek to repeal, was inserted, not at our instance, but at that of owners and others in Sandown-park, on the opposite side of the railway. Still we are entitled to the benefit of the section. (*Cheshire Lines Committee Bill, 1881, Petition of Owners, &c., in Toxteth Park, 3 Clifford & Rickards, 30.*)

Pope, Q.C. (for promoters): The question is, whether residents in Dryden-road are sufficiently interested in the repeal of sec. 39 to entitle them to be heard. The proposed junction No. 1 is to be made upon land belonging to the company, and which they hold for railway purposes. It is forty feet above the general level of the rails, and in the year 1861 we did not conceive that we should be likely to excavate and make use of that land for sidings.

Recently, however, a new system of working sidings there has been adopted, by which the loaded trains are taken to the top of an elevation, and pass down by their own gravity about a mile of gradient, thereby economising labour and avoiding the noise, smoke and steam of the engines. Everybody had forgotten about sec. 39, and we proceeded to put in our sidings there. Then the owners in Sandown-park, a residential district on the opposite side of the railway, went to the Court of Chancery and procured an injunction based on the prohibition clause of 1861. We are therefore in possession of this land, and have made sidings there, but are prevented from using them, and the object of clause 4 is to repeal that prohibition. No doubt, therefore, the persons for whose benefit sec. 39 was inserted in our Act of 1861, are entitled to be heard as to the terms upon which that repeal may take place; but not so the petitioners.

The CHAIRMAN: I suppose sec. 39, though inserted at the instance of the people in Sandown-park, did not recite that it was for their special benefit?

Pope: No; but the case stands thus: although in the first instance the prohibition in sec. 39 extends to the whole of the land in question, the proviso allows us to construct double lines of railway "with a reasonable amount of siding," on land numbered among others 7, which is the land nearest to the houses of the petitioners.

The CHAIRMAN: If that be so, the *locus standi* of the petitioners must be disallowed.

Locus standi Disallowed.

Agent for Petitioners, Loch.

Agents for Bill, Sherwood & Co.

LONDON AND SOUTH-WESTERN AND METROPOLITAN DISTRICT RAILWAY COMPANIES BILL.

Petition of (1) THE SURBITON IMPROVEMENT COMMISSIONERS.

28th March, 1884. — (Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE-PALMER, M.P.; Mr. PARKER, M.P.; Hon. E. CHANDOS LEIGH, Q.C.; Sir JOHN DUCKWORTH; and Mr. BONHAM-CARTER.)

Railway, Extension of Time for Construction of, and Compulsory Purchase of Lands—Local Authority—Postponement of Street Improvements, and Development of District—Advantages Secured under Original Act Deferred by Bill—S. O. 134 [Municipal Authorities

and Inhabitants of Towns], Discretionary Power of Court under.

The bill was for extending the time for the construction of a railway, and the compulsory purchase of lands in connection with it, which passed through the district of the improvement commissioners petitioning against the bill. They alleged that the proposed extension of time would prejudicially affect their district by postponing the carrying out by them of certain street improvements, and so hinder the growth and development of the district, and also defer the benefits which the district would derive from certain provisions in its favour inserted in an Act obtained by the London and South-Western railway company in 1882:

Held, that the petitioners were entitled to be heard under the discretionary power conferred upon the Referees by S. O. 134.

The *locus standi* of the petitioners (1) was objected to, because (1) the petition does not allege, or show, nor is it the fact that any land, house, or property belonging to the petitioners will be or can be affected by the extension of the time limited for the compulsory purchase of land as proposed by the bill; (2) the alleged postponement of the advantages and improvements, secured to the district of the petitioners, by reason of the extensions of time proposed by clauses 6, 7, 8 and 9 of the bill does not so injuriously affect their district as to entitle them to be heard according to practice; (3) the petition discloses no ground for a hearing according to practice.

Bazalgette (for petitioners): The bill is one for extending the time for the completion of railways in the hands of the London and South-Western and the Metropolitan District railway companies between the Surbiton stations of the London and South-Western company and the Fulham station of the Metropolitan District railway, as well as the time for compulsory purchase of lands for the completion of works authorised by the Kingston and London Railway Act, 1881, the London and South-Western and Metropolitan District Railway Companies (Kingston and London Railway) Act, 1882, and the London and South-Western Railway Act, 1882. The petitioners claim a *locus standi* under the discretionary power of the Court under S. O. 134. The petitioners allege that they are

al authority under the Public Health Act, 1875, having the charge of and control over the local Government district of Surbiton, and the allegations of the petition amount to a substantial statement that the district of the petitioners will be injuriously affected by the bill. The effect of the proposed extension of time would be to postpone the advantages and improvements secured to the district by sec. 53 of the London and South-Western Railway Act, 1882, and we state that we strongly object to any postponement as prejudicially affecting our district. We are the road authority, and in the preliminary notices for the bill, no less than in the original Act, the period for the construction of the line was limited to five years. The bill extends that period to eight years, and we ought to be allowed to go before the Committee to adduce evidence that it would be impossible for us, or at all events imprudent for us, to deal with those roads for the purposes of laying down sewers, or gas or water pipes, until the works which have to be completed by the railway company are completed, and the levels of those roads have been definitely ascertained. Not only does the extension of time affect such matters as sewers and pipes, but it retards the development of the district, and landowners will not build at the side of roads, and the powers which are held in suspense by the railway company, and along which sewers and pipes cannot be finally laid.

CHAIRMAN: The company have not completed the works yet. Would your contention be that they should be abandoned?

ALGETTE: Either completed within the period originally fixed by Parliament or not completed.

CHAIRMAN: Is this a mere extension of time?

ALGETTE: Yes. The *Great Eastern Railway Bill*, 1872 (2 Clifford & Stephens, 231), is in my opinion in conformity with sec. 53 of the London and South-Western Railway Act, 1882, put the railway company under obligations to do certain works for the benefit of the petitioners. The bill limits the period for conferring that benefit upon the district. *Whitby, Redcar, &c., Union Railway Bill*, 1875 (1 Clifford & Rickards, 199).

CUR. The *St. Helen's and District Tramway Bill*, 1881 (3 Clifford & Rickards, 94), is to the contrary.

C. Q.C. (for promoters): The improvement commissioners speak in their petition of the district being prejudicially affected, but the question is whether there is anything in the bill to show that such will be the result of

the proposed extension of time. No doubt an injury may be done to a district by such an extension, but it does not follow that it is so. *Metropolitan Railway Bill*, 1872, on *Petition of Whitechapel District Board of Works* (2 Clifford & Stephens, 237). There is here no repeal or interference with the legislation of 1882 in favour of the petitioners. Sec. 53 of the London and South-Western Railway Act, 1882, remains intact; there is only a postponement of its being carried out. A landowner may be specially affected in dealing with his land by an extension of time bill, but a local authority is not in that position.

The CHAIRMAN: We think that under the discretion given us by S. O. 134 we ought to allow the *locus standi* in this case.

Locus standi of Surbiton Improvement Commissioners Allowed.

Agents for Petitioners, *Greenfield & Abbott*.

Petition of (2) OWNERS, LESSEES, AND OCCUPIERS (ARTHUR BURT AND OTHERS).

Practice—Objections referring to some only of the Petitioners—Claim of those objected to not pressed, on Undertaking from Promoters' Counsel, and no decision of Court being given as to.

The objections referred by name to some only of the signatories to the petition, and the right to a *locus standi* of the others was therefore unchallenged. The Court suggested that counsel for the petitioners should not press the claim of those who were objected to, but proceed before the Committee upon the petition of those only who were not objected to, and, upon an undertaking from the promoters' counsel to admit the facts before the Committee, this course was agreed to, no decision being given by the Court as to the claims of the other petitioners to be heard.

A preliminary notice of objection stated that the promoters intended to object to the *locus standi* of a number of the petitioners (who were named in the objection), but did not enumerate all the signatories to the petition. Those objected to were objected to on the following grounds; viz., because (1) no compulsory powers of purchasing any lands, houses, or other property belonging to, or occupied by

the petitioners are sought by the bill, nor is any extension of time for the exercise of such powers with reference to any lands, &c., belonging to, or occupied by the petitioners sought by the bill; (2) the bill does not interfere with the agreement and deed mentioned in the petition or the rights and remedies thereunder of any of the parties thereto; (3) the petitioners are not affected by the proposed extension of time for completion of works and are not entitled to be heard against the provisions of the bill relating thereto; (4 and 5) the bill does not contain any provisions affecting the petitioners, and the petition discloses no ground for a hearing according to practice.

Balfour Browne (for petitioners): The promoters say that they intend to object to the right of the following petitioners who sign the petition, and then give the names of those objected to; but there are five others who sign, and their *locus standi* is therefore not objected to. The *locus standi* of those not named is, therefore, conceded. I am prepared to show that all the petitioners are entitled to be heard, and I would ask my learned friend whether it is worth while to object to the *locus standi* of the others?

The CHAIRMAN: You can call the others as witnesses. Are you in any better position by having a *locus standi* for all the petitioners? The facts could be explained to the Committee.

Clerk, Q.C. (for promoters): I will undertake to put the Committee in possession of a correct knowledge of what occurred before this Court.

Browne: I am confident that I should have obtained a *locus standi* for all the petitioners, but Mr. Clerk's remarks being upon the notes, I am content to let the case stand upon the petition of the five petitioners whose *locus standi* is conceded, it being understood that there is no formal decision of the Referees against the petitioners who are named in the preliminary objection.

Locus Standi of five of the petitioners Allowed—viz., Richard J. Slack, William Reeve, J. Knight, Josiah Ritchie, and Robert Aviss.

Agent for Petitioners, *Bell*.

In the case of (3) F. C. BRYANT and T. H. BRYANT (*Reader Harris* for petitioners), and of (4) THE WIMBLEDON AND WEST METROPOLITAN JUNCTION RAILWAY COMPANY (no Counsel appearing), the objections to the *locus standi* of the petitioners were withdrawn.

Agents for Petitioners (3), *Sherwood & Co.*

Agents for Petitioners (4), *Tahourdin & Hargreaves*.

Agent for Bill, *Bell*.

LONDON AND SOUTH-WESTERN RAILWAY BILL.

Petition of the WIMBLEDON AND WEST METROPOLITAN JUNCTION RAILWAY COMPANY.

4th April, 1884.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE-PALMER, M.P.; Mr. PARKER, M.P.; Sir JOHN DUCKWORTH; Hon. E. CHANDOS LEIGH, Q.C.; and Mr. BONHAM-CARTER.)

Railway Companies—Lands Scheduled under Bill, over which Petitioners had obtained Compulsory Powers in Previous Session—Junctions, Physical Interference with Petitioners' Railways by—Limited locus Conceded—Abstraction of Traffic—Competition, Development of Existing.

The promoters scheduled under the bill certain lands over which the petitioners had obtained compulsory powers of purchase in an Act of a previous Session, and also sought to form junctions with the railway of the petitioners authorised by the same Act. The petitioners claimed to be heard generally on both points, and, with regard to the latter, alleged that the formation of the proposed junctions would so interfere with their authorised railway as to defeat the objects for which it was sanctioned by Parliament, viz., the forwarding of traffic to the west end of London, and would thus create in the hands of the promoters a monopoly of such traffic. On the ground of the effect, which they anticipated from such junctions upon their London traffic, the petitioners founded a claim to be heard generally on the ground of competition:

Held, that no such competition would be created by the bill as entitled the petitioners to be heard on that ground, and, in accordance with previous decisions, that their *locus standi* must be limited to the questions of the scheduling of land and the formation of junctions.

The *locus standi* of the petitioners was objected to, because (1) the petition does not allege or show that the Bill contains provisions for taking or using any part of the lands, railway stations, or accommodations of the

petitioners; (2) the fact that the petitioners possess compulsory powers over lands, which the promoters will require to traverse for the purpose of effecting the proposed junctions with the petitioners' authorised railways when constructed, does not give the petitioners any right to be heard against the bill otherwise than with respect to physical interference by such junctions with the construction of their authorised railway; (3) the petition does not allege or show that any competition between the petitioners and the promoters would be caused by or result from the bill if passed, and the apprehension of the monopoly of traffic referred to in the petition, even if well founded, would not so affect the petitioners as to entitle them to a hearing according to practice; (4) no power is sought to extend the time limited for the compulsory purchase of any lands belonging to the petitioners, and they are not affected by the extension of time for the compulsory purchase of lands which is sought by the bill; (5) the petitioners were not, nor do they allege that they were, parties to the heads of agreement scheduled to the Kingston and London Railway Act, 1881, nor have they any such rights thereunder or otherwise with reference to the railways authorised by that Act and the London and South-Western and Metropolitan District Railway Companies (Kingston and London Railway) Act, 1882, as entitle them to be heard against the bill; (6) the petitioners are not entitled to be heard against the provisions of clauses 34 and 35 of the bill, which are purely permissive; (7) the petition discloses no ground for a hearing according to practice.

Tahourdin, Parliamentary agent (for petitioners): The bill proposes by clause 5 to make certain junctions at Wimbledon and Raynes-park between the lines of the London and South-Western and the railways of the petitioners, viz., junctions Nos. 1, 2 and 3; and the petition alleges that "For the purposes of these junctions the bill will authorise the London and South-Western company to acquire by compulsion divers lands and property which your petitioners are authorised to acquire for the purposes of their undertaking." Our petition is directed not only to clause 5, but also to clauses 30, 31, 32 and 33 (which are clauses for extending the time for the purchase of land and for the construction of the Kingston and London railway) and to clauses 34 and 35, which empower the South-Western company to enter into agreements with us with respect to construction, working, use and management of our respective railways. With regard to clauses 30, 31, 32 and 33 similar clauses are

contained in the *London and South-Western and Metropolitan District Railway Companies Bill* against which our *locus standi* is conceded. With regard to clause 5, sub-sections 1, 2 and 3, which give power to the company to make junctions with our railway, the Wimbledon and West Metropolitan junction, so far as the question of mere physical interference goes, a *locus standi* is conceded. The only question is whether the allegations in the petition that go beyond mere physical interference entitle the petitioners to be heard.

Clerk, Q.C. (for promoters): Inasmuch as we both schedule the same land, that is to say, as we schedule for our bill of this year land which the petitioners are authorised to take for the construction of their junctions, but which they have not given notice to take, we concede that they would be entitled according to several of your decisions to be heard to show that our dealing with that land may interfere with the construction of their proposed junctions.

The CHAIRMAN: Have we limited the *locus standi* in that way?

Clerk: Yes.

Tahourdin: Our railway, which was authorized by an Act of 1882, commences by a junction with the Tooting and Merton railway, at Wimbledon [we have running powers over the Tooting and Merton into Wimbledon], and terminates by a junction at Putney with the authorized Kingston and London railway, which is now vested in the South-Western and the Metropolitan District companies; and our railway was promoted for the purpose of giving access from the Mitcham, Merton, Tooting, Wimbledon, Epsom and Leatherhead districts to the west end of London, by means of the Kingston and London and Metropolitan District. The petition goes on to allege, "the effect of the proposed junction railway, No. 1, if authorized, will be to enable the London and South-Western company to exercise the power of constructing the said junction in such a way as to seriously impair the public utility of your petitioners' authorized railway, and defeat, in a great measure, if not altogether, some of its chief objects, viz., the junction with the Tooting and Merton railway, and with the railways of the London, Brighton and South Coast railway company."

The CHAIRMAN: That would be competition.

Tahourdin: Yes, and abstraction of traffic. Then the petition goes on: "Your petitioners are prepared to show that the points selected by the South-Western company for joining your petitioners' authorized railways are inconveniently placed, and will interfere with the

proper conduct of, and be dangerous to, your petitioners' traffic."

The CHAIRMAN: That is covered by the *locus standi* which is conceded?

Tahourdin: Yes, but we say at the end of that allegation—"And by means of the said junction railways, if authorised, the South-Western company will be enabled to divert and take away traffic from your petitioners' railway, when constructed, to which your petitioners would be entitled, and which it is the object of your petitioners' railway to serve."

The CHAIRMAN: You have not yet given notice to take the land; and the *locus standi* as regards physical interference being conceded, you have to show us that there would be competition or abstraction of traffic.

Tahourdin: We say the object of these proposed junctions is to defeat former legislation. If power to make them is granted to the South Western company, our railway, instead of serving the purposes which Parliament, in sanctioning it, contemplated that it would serve, would be a mere local line.

The CHAIRMAN: Will you show us how traffic would be diverted?

Tahourdin: Junction No. 1 ends in a dead end; by that junction they would be able to turn our line into a mere local line—they would so work the traffic as to prevent our getting any of the through traffic.

The CHAIRMAN: What traffic, going from what place to what place, would junction No. 1 stop?

Tahourdin: It would prevent traffic from Tooting to Epsom coming on to our line.

(Mr. Robinson, the petitioners' engineer, pointed out junctions Nos. 1, 2 and 3 upon the plan, and explained what the effect of them would be.)

Mr. CHANDOS LEIGH: By the Act of 1882 you were authorised compulsorily to acquire certain lands which the South-Western company now propose to take for the purpose of making these junctions?

Tahourdin: Yes, that is so.

The CHAIRMAN: Do the promoters propose to use any of those lands for the purposes of their railway other than junctions?

Tahourdin: Yes; they take those lands for the purpose of making a portion of their railway. In addition to the physical junction they take, for the construction of their line, land which we have power to acquire, and we say if they are allowed to do so they will render it impossible for us to construct our line in accordance with the Act of 1882. Nearly the whole of railway No. 2 is upon land over which we have the right to exercise compulsory powers of purchase.

The CHAIRMAN: Do you contend that by reason of their taking for the purpose of constructing their line land which you are authorised to take, you are entitled to a general *locus standi*?

Tahourdin: Yes. The case with respect to competition is this: The South-Western company have always acted hostilely to this line from the time of its commencement. Our line was passed for the purpose of accommodating traffic that would otherwise go over a portion of the South-Western, and for accommodating that traffic in a way that the South-Western is not able to accommodate it at the present time; and we say in our petition that these junctions are promoted by the London and South-Western company for the purpose of enabling them to keep the traffic in their own hands.

The CHAIRMAN: Is not their scheme, so far as it is competition, merely a development of existing competition?

Tahourdin: I submit not. Their scheme is a scheme for the purpose of defeating what Parliament has already done.

The CHAIRMAN: Parliament, when it authorised your line, to a certain extent authorised competition with them, and this retaliation on their part seems to be a development of that previously-existing competition which you created by your Act.

Tahourdin: It is more than that, because we are entitled to take Brighton traffic, but they are not entitled to take Brighton traffic by making junctions with our line, which will prevent our getting the traffic at all.

Clerk: We have no power of running up your line.

Tahourdin: You could always get power under the General Railway Act to have your traffic carried on. The case of the *Oxted and Grovesbridge Railway Bill*, 1883, on the *Petition of the South-Eastern Railway Company* (3 Clifford Rickards, 326), is in point.

The CHAIRMAN: The *Whitehaven, Cleator and Egremont Railway Bill*, 1877 (2 Clifford Rickards, 65) was a similar case to this. Here the promoters have offered a *locus standi* in respect of physical interference by the making of the junctions. That case goes further, because there was a *locus standi* conceded on the ground that the promoters took land that the petitioners had scheduled.

Clerk: I concede a *locus standi* to the extent distinctly.

The CHAIRMAN: Is not that enough?

Tahourdin: My case is also one of competition; and I submit that the bill is not merely one for improving an existing competition.

The CHAIRMAN: We have three grounds

deal with:—First, a limited one physical interference about which it; secondly, a *locus standi* in both claiming the same land; general *locus* upon the question.

In reply): *The East and West Railway Bill*, 1883 (3 Clifford 271), is the same case as the sole question that will come before the committee will be the making the two junctions. The right to make junctions under the Act of 1882. We say that right will be given with. That being so, the petitioners have no claim to a *locus standi* of competition. There is no monopoly, because they will be in competition with the joint station of the petitioners, so that the traffic would come from the London and on to the petitioners' line. We limit, so that it may be perfectly consistent with their junctions consistently with their the only question would be, first, would be a physical interference injurious to the petitioners; and either our taking any of the lands them would interfere with the operation of their branch—if not, the *locus standi* would be, I take it was given in the case referred to, e., the *Whitehaven, Cleator and*

N: I think the *East and West Railway Bill* would be the best to two cases are identically the same.

is another similar case, the *Whitehaven, Cleator and West Yorkshire Railway Bill*, 1883 (3 Clifford 271).

N: In the *Whitehaven, Cleator and West Yorkshire Railway Bill* the promoters and both scheduled the same land in the petition. That is a different case to the *East and West Yorkshire Railway Bill*.

the one most like this. The petition has stated, no doubt, that some of the land, which the petitioners are authorised to take, would be taken by the junctions which are mentioned in the petition and in clause 5. Then, to take these words—*locus standi*—so much of the bill as relates to the junctions mentioned in clauses 1, 2 and 3, and so much of the bill as relates thereto?

it would be with regard to taking the land and physical interference.

The CHAIRMAN: We had better say against physical interference, and against the taking of so much of the lands, which the petitioners are at present authorised to take, as would be included in the construction of the junctions mentioned in clause 5.

Locus standi of the Wimbledon and West Metropolitan Junction Railway Company *Allowed*, limited accordingly.

Agents for Petitioners, *Tahourdin & Hargreaves*.

Agent for Bill, *Rees*.

MANCHESTER, BURY AND ROCHDALE TRAMWAY (EXTENSION) BILL.

Petition of (1) JUSTICES OF THE PEACE FOR THE COUNTY PALATINE OF LANCASTER.

2nd May, 1884.—(Before Mr. HINDE-PALMER, M.P., Chairman; Mr. PARKER, M.P.; Mr. MELDON, M.P.; Sir JOHN DUCKWORTH; Mr. BONHAM-CARTER; and the Hon. E. CHANDOS LEIGH, Q.C.)

Practice—Representation of County Justices by Committee—Quorum of Committee Petitioning—Authority to Petition not alleged—Proof of Authority supplied by Minute Book.

Tramway traversing Main Roads—County Justices claiming to be Road Authority—Highway and Locomotives Act Amendment Act, 1878 (41 & 42 Vict., s. 13, c. 77)—Justices contributing Moiety of Road Repairs—Tramways Act, 1870—Road Authority, definition of, under—Representation of County Justices by Highway Board.

A petition against a tramway bill, purporting to be the petition of "justices of the peace for the county palatine of Lancaster," was signed by three justices, who alleged that they were members of a committee appointed by a resolution passed at sessions, which authorised them to petition against bills as prejudicially interfering with county interests. It was objected that the petition did not show (1) that the three petitioners duly represented either the committee or the justices; or (2) had any authority to petition against the bill. The resolution passed at quarter sessions was produced, and proved that three members of the committee might act as a quorum; and an entry in the minute-book of the committee

was also read authorising a petition against clauses. Thereupon the technical objection was withdrawn, and the *locus standi* of the petitioners admitted against clauses in the bill affecting county bridges.

The petitioners claimed a further right to appear in respect of interference by the proposed tramways with main roads. They based their claim upon sec. 13 of the Highways and Locomotives Act Amendment Act, 1878, which made county justices liable to contribute one-half of the cost of maintaining main roads; and as being within the definition of "road authority" in sec. 3 of the Tramways Act, 1870. It was objected (1) that, under the Act of 1878, county justices are merely contributories to the outlay upon the roads, and are represented in the opposition to tramway bills by the highway boards or parochial bodies, upon whom rest the control of the roads and the responsibility for such outlay; (2) that the petitioners were not within the definition of "road authority" in sec. 3 of the Tramways Act, the main roads not being "vested" in them, and they not having "the power to maintain or repair such roads":

Held, that under neither of the Acts in question were the petitioners entitled to a *locus standi* against interference with roads.

The *locus standi* of the petitioners was objected to, because (1) the petition is not that of the justices, as it purports to be, but the petition of some members of a committee, and is informal, incorrect and improperly executed; (2) such committee are not the authority entrusted with the care, management and repair of the county and hundred bridges and approaches; (3 and 4) neither the justices nor the committee are a road authority within the meaning of the S. O., or of the Tramways Act, 1870; (5) steam power has already been authorised and is in use on the tramways authorised by the Manchester Provisional Order of 1882, and the petitioners are not entitled to any veto as claimed by them; (6) their liability to contribute towards the maintenance of main roads does not constitute them a road authority, and the laying of tramway lines involves no increased expenditure on the part of the road authority in the maintenance of the roadway,

and gives the petitioners no right, apart from the road authority, to impose additional terms and conditions upon the promoters; (7 and 8) no property, right or interest of the petitioners will be taken or interfered with, and they show no ground entitling them, according to practice, to appear against the bill.

G. A. R. FitzGerald (for petitioners): This is a petition from "the justices of the peace for the county palatine of Lancaster," and is signed by three members of a committee duly constituted and appointed by an order of quarter sessions for the purpose of petitioning, of which committee three were to be a quorum. The technical objection taken may have been suggested by the *Derby Corporation Bill*, 1877 (2 Clifford & Rickards, 7), but our petition is clearly distinguishable, for it supplies the information which in that case was wanting. We say that the petitioners, with other justices, were appointed, at the sessions held on September 13th, 1883, "a committee to watch all bills which might be introduced into Parliament connected with or relating to the interests of the county," and that they were "also authorized to take all such steps as might be necessary to protect the interests of the county by opposing or petitioning against any bill which prejudicially interfered with or affected those interests." By this resolution three members of the committee were to be a quorum. The petitioners, therefore, duly represent the committee.

Pembroke Stephens, Q.C. (for promoters): You have next to show that the committee authorized this petition.

FitzGerald: Here is an entry in the minute-book of the committee: "Resolved that a petition be presented against this bill with a view of obtaining the insertion therein of such clauses and amendments as may be necessary for the due protection of the rights and interests of the county ratepayers."

The CHAIRMAN: The resolution passed at quarter sessions shows that three members of the committee then appointed are a quorum, and, coupled with the resolution authorizing the petition, seems to meet the preliminary objection.

Stephens: This information was not afforded by the petition, and until it was produced there seemed good ground for our objection. If the petitioners duly represent the justices, I admit their right to be heard upon clauses affecting the county bridges, but I deny that they have any *locus standi* in respect of main roads.

Mr. MELDON: The terms of the resolution authorizing the petition seems to restrict the opposition to clauses.

FitzGerald : Upon the question of roads the petitioners say that they are the county authority under the Highways and Locomotives Act Amendment Act, 1878 (41 & 42 Vict., c. 77), which provides (sec. 13) that one-half the expenses incurred in maintaining main roads shall be defrayed out of the county rate, upon the certificate of the county surveyor that the minor authorities, highway boards or parochial bodies, have properly repaired these roads. The objection to us is that we are not the road authority, but we do not allege that we are. We claim to be heard, not merely as the road authority but as the county authority upon whom this burden was for the first time imposed by the Act of 1878, and the point has not before been raised in this Court. Under the Act of 1878 the justices have to contribute £30,000 a year towards the maintenance of roads in the county. Their interest is therefore such that they feel they ought to have a *locus standi* against this and all similar bills. We also claim to be the road authority under sec. 3 of the Tramways Act, 1870, which defines such authority to be, elsewhere than in the metropolis, "any local authority, board, town council, body corporate, commissioners, trustees, vestry, or other body or persons in whom a road as defined in this Act is vested, or who have the power to maintain or repair such road."

Mr. MELDON: Is not "the power to maintain or repair" roads in the highway boards or parochial authorities?

FitzGerald : Yes, primarily; but as we pay half the expenses of maintenance, upon the certificate of our surveyor, I submit that we come within the definition. It is true that the justices cannot order anything to be done to the road, but they can refuse the supplies, and are therefore indirectly entrusted with the maintenance and repairs.

Stephens : They cannot refuse the supplies.

FitzGerald : Yes; if the surveyor withholds his certificate. The enormous expenditure imposed upon us under the Act of 1878 gives us an interest in the main roads of the county, which of itself should entitle us to appear.

Stephens (in reply) : According to the practice of this Court, whenever a duty has to be performed, and money has to be expended, and the necessary amount has to be levied on other people, the latter are always regarded as in the position of ratepayers, who are represented by the body entrusted with the duty and the expenditure. In this case Parliament has left to the highway boards or parochial bodies the duty of maintaining roads, and these, therefore, are the authorities entitled to say whether tramways shall or shall not be laid upon these roads. The justices

are no more than contributories towards an outlay made by another authority, and the Act of 1878 has put them in this position without any qualification or saving clause. Under these circumstances the doctrine of representation clearly applies.

Mr. MELDON: A statutory duty is imposed upon the justices to contribute, first seeing that the work has been properly done; but they have no right to interfere with the work?

Stephens : No; out of the county rates levied by them they must pay over a portion to the highway boards.

FitzGerald : The justices levy rates for road purposes under the Act of 1878 just as a highway board or vestry, or municipal corporation levies them; and the justices represent the county ratepayers for the purposes of such bills as this, just as those bodies represent their constituents.

Stephens : Not so. The highway board represent, for road purposes, the whole body of ratepayers, among whom there happens to be one large ratepayer, namely, the county justices.

FitzGerald : The highway rate and the county rate are totally distinct; they are levied in different areas and on different persons. The two interests are distinct, and may even be antagonistic; and the county justices are as much entitled to appear here to represent the county ratepayers as the highway board is to represent the highway ratepayers within a more limited area.

Stephens : It seems to be assumed that there are two independent and concurrent authorities, each levying half of the expenses for maintaining the roads, and each, as it were, paying its own half. That is not the position. The highway board must first incur the whole expense, and are then to be recouped by the justices as to a moiety. For road purposes it is clear that the highway board is the governing authority, judging what the outlay should be, and then recovering half of that outlay from the justices.

Mr. MELDON: The ratepayers represented by the justices have no means whatever of interfering with the expenditure upon the roads?

Stephens : Absolutely none.

FitzGerald : Indirectly they have, as the surveyor may refuse his certificate if the roads are not maintained to his satisfaction. As one-half of the sum paid by the local authorities is provided out of the Consolidated Fund, the interest of the highway boards is really a quarter, while ours is one-half.

Stephens : The quantum of interest is immaterial; what we want is the authority controlling expenditure and responsible for the duty. As to the Tramways Act, the short

answer, founded upon the definition of "road authority" in sec. 3, is that the roads are not "vested" in the justices, who have no "power to maintain" them, and do not, in fact, maintain them.

The CHAIRMAN (after consideration): The Court have decided to *Disallow* the *locus standi* of the justices except upon clauses authorizing interference with county bridges.

Locus Standi limited accordingly.

Agents for Petitioners, *Sherwood & Co.*

Petition (2) of CORPORATION OF THE BOROUGH OF HEYWOOD.

In this case (*O'Hara* appearing for the petitioners) a *locus standi* was, by agreement, conceded to them against the clauses affecting them, viz., clauses 52, 53, 54, 57, 64, 65, 69, 71 and 72.

Agents for Petitioners, *Sharpe, Parker, Pritchard & Sharpe.*

Agent for Bill, *Bell.*

MANCHESTER, SHEFFIELD AND LINCOLNSHIRE RAILWAY (CHESTER TO CONNAH'S QUAY) BILL.

Petition of (1) RIVER DEE COMMISSIONERS.

10th March, 1884.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE-PALMER, M.P.; Hon. E. CHANDOS LEIGH, Q.C.; Sir JOHN DUCKWORTH; and Mr. BONHAM-CARTER.)

Railway Bridge Swinging Across Navigable Channel—Piers in Mid-Stream—Obstruction of River—River Commissioners, not being Conservators—Power to Maintain Standard Depth of River—Power of Entry if default made—Corporation with Powers over River also Petitioning—River Company—Dee and Mersey Junction Railway Bill, 1865 (Smethurst, Ed. 1867, App. 72) followed.

The bill, *inter alia*, empowered the promoters to construct a railway bridge across the river Dee. It was admitted by the promoters that the proposed bridge would, to some extent, obstruct the channel of the river, but it was objected that the petitioners, the River Dee commissioners, were not the conservators of the river, or the proper parties to object to its obstruction. It appeared that under

certain Acts of George II., the River Dee company were constituted the "undertakers of the navigation" of the river, and were required to keep the river at a certain standard depth, but the petitioning commissioners were also appointed under the Acts to see that the River Dee company did nothing to injure the navigation of the river and maintained it at the required standard depth. For enforcing these conditions the commissioners were authorised, in case of non-compliance by the River Dee company, to enter upon the lands of the latter, suspend their receipt of dues, and enforce penalties against them, executing the works themselves out of the funds of the River Dee company. All this, however, the promoters contended was with one object, viz., the preservation of the standard depth of the river, and did not constitute the petitioners conservators, in the ordinary sense of the term, with control over the navigation. The promoters relied upon a previous decision of the Court upon the same point, viz., in the *Dee and Mersey Junction Railway Bill, 1865* (Smethurst Ed. 1867, App. 172). The *locus standi* of the corporation (who exercised certain rights of supervision over the river) was, as in the cited case, conceded by the promoters:

Held, that, no new circumstances having arisen meanwhile, the decision in the previous case cited by the promoters must be followed, and the *locus standi* of the petitioners disallowed.

The *locus standi* of the petitioners was objected to, because (1) they do not allege in their petition, nor is it the fact that any lands or property belonging to them are proposed to be taken or interfered with under the powers of the Bill; (2) the commissioners are not the conservators of the river Dee, but have simply a statutory power enabling them, in case the depth of the water in the river Dee should be reduced below a certain standard depth, to require the River Dee company to restore that standard depth, and this statutory power is not altered or repealed by the bill; (3) the commissioners have no control over the banks or navigation of the river; (4) the persons signing the

petition are only a small number of the commissioners and do not represent that body. They had not nor have they any authority to sign the petition for or on behalf of the other commissioners, the statement at the heading of the petition that the persons signing were specially authorised by the other commissioners not being correct; (5) the petition discloses no ground for a hearing according to practice.

Pembroke Stephens, Q.C. (for petitioners) : It is proposed by the bill to construct a railway to form part of a communication across the river Dee, between the railways belonging to the Cheshire Lines committee, and the railways of the Wrexham, Mold and Connah's Quay railway company. It is proposed by sec. 5 to cross the river by means of a bridge with two opening spans, having a clear headway above high water of ordinary spring tides of 15 feet. It appears, from the deposited plans and sections, that the two opening spans are to be worked on the swivel principle, from a pier in the centre of the river. This pier will take a considerable width out of the navigable channel (which is only about 100 yards wide), will oppose a serious resistance to the flux and reflux of the tide along this navigable channel, and will prejudicially affect the scour of the river, whilst it will also injuriously affect and endanger the artificial banks and bed of the river. Moreover there will be other piers in the bed of the river, which will still further contract the navigable channel and act injuriously upon the scour. The navigation of the river Dee, which at this place runs in a channel artificially constructed, is wholly dependent for its maintenance upon the free flow of the waters within this artificial channel, and the powers sought of crossing the river in the manner proposed by the bill are objected to by the petitioners, who are deeply interested in the navigation of that river. The petitioners are commissioners constituted for the purpose of protecting the navigation of the river Dee to and from Chester, and they were by virtue and in pursuance of an Act, 6 Geo. II., cap. 30, and by several subsequent Acts, entrusted with preserving that navigation. By the first Act (6 Geo. II., cap. 30) certain persons were appointed undertakers of the navigation, and were empowered to make and keep the river Dee navigable from the sea to a point within the liberties of the city of Chester, called "Wilcox point," in such manner that there should be sixteen feet of water in every part of the river at a moderate spring-tide for ships and vessels to come and go to and from the city, and the undertakers were empowered in consideration of the expense

undertaken by them of making and keeping the river navigable, to enclose, reclaim, and take certain lands in that Act specified, and as soon as the river should be made navigable for ships and vessels to take and receive certain duties and tonnage upon ships. By another Act (17 Geo. II., cap. 28), instead of the depth of sixteen feet, the undertakers, who had previously been incorporated into a company, called "The River Dee company," were required to maintain and keep the river Dee between certain points at a standard depth of fifteen feet of water in every part of the channel of the river for ships coming and going to and from the city of Chester; and it was provided that, in case such depth of water was not maintained, then, after the expiration of four calendar months, payment of tonnage duties to the River Dee company should cease, and if, after the expiration of eight months next after the expiration of such period of four months, there should be less than the before-mentioned depth of water, it should be lawful for the petitioners (the River Dee commissioners) to enter upon the lands vested in the Dee company, which now yield a large annual revenue, and to hold the same until they should have raised and received as much money as should be necessary to be expended in regaining the standard depth of fifteen feet. Pursuant to the directions of the last-mentioned Act, and of the Dee Standard Restoration Act, 1851, frequent examinations of the river are made under the direction of two supervisors (one appointed by the corporation of Chester and the other by the River Dee company) in order to ascertain if the depth prescribed by statute is maintained, the results of which examinations are reported to the petitioners, whose duty it is to see that the navigation is duly preserved, and to prevent anything being done which may have the effect either of injuring the river or of preventing or releasing the River Dee company from fulfilling their obligations in respect to it. The navigation of the river Dee extends for several miles above the site of the proposed bridge as far as the city of Chester, up to which point it is used by vessels of considerable draught, and there are upon it numerous manufacturing and other works, wharves and quays of considerable importance. The navigable channel of the river, owing to the great volume of sand within the estuary, requires for its maintenance all the scour afforded by tidal and fresh water currents, and any interference with the channel either by alteration of the channel or by placing in it any impediments, such as the works proposed for carrying the railway across it, will, apart from

all other objections, make it practically impossible to maintain the navigation up to the standard depths prescribed by the Acts.

The CHAIRMAN: As I gather, the point is this, that you are commissioners for one purpose only, and possess none of the general powers which the conservators of a river usually have. I suppose there is no question about interference with the river. If you were conservators, it is admitted that you would be entitled to be heard.

Worsley Taylor (for promoters): Certainly. I do not deny that there will be obstruction to the river by the proposed bridge, but these petitioners are not the proper parties to be heard as to it.

Stephens: The suggestion is that this is the affair of the River Dee company; though that is not specifically stated in the objections, it is obviously in the minds of the promoters; but from the earliest times the river, as to various matters, was put under the river Dee commissioners. Secs. 14 and 17 of 14 Geo. II., cap. 8, re-enact the same powers in the hands of the petitioners as the previous Act, and those powers and duties are repeated and expressly preserved by several subsequent Acts down to and including the Dee Standard Restoration Act, 1851, which recites the previous history of the Dee company, the enclosure of the White sands, and the previous Acts, and then says—"and whereas it is expedient that the powers of the present river Dee commissioners under the said recited Acts should be continued, and that additional powers should be granted and entrusted to the said commissioners." The additional powers are shortly, that they shall restore the standard—i.e., there is a new standard to be set up by the Admiralty at the expense of the company, a new standard in continuation of the original standard.

The CHAIRMAN: The case of the *Dee and Mersey Junction Railway Bill*, 1865 (Smethurst, Ed. 1867, App. 172), seems to decide this very point.

Stephens: I am quite aware of that case. If you look at the decision you will see it is stated in so many words that the only functions of this body were with regard to keeping up the depth of water; but the fact is they have other functions.

The CHAIRMAN: Have any additional powers been given to you since the decision in that case?

Stephens: No additional powers. It might shorten matters if I deal with the reported case at once. In that case the *locus standi* of the Dee commissioners was objected to on the ground "that the commissioners were not the conservators of the Dee" (in name I believe the word

"conservators" does not occur in any of the Acts) "but had simply a statutory power enabling them, in case the depth of water in the said river should be reduced below a certain standard, to require the river Dee company to restore such standard depth, and that such statutory power was not altered or repealed by the bill."

Mr. CHANDOS LEIGH: In that *Dee and Mersey Junction* case, what was the interference with the navigation?

Worsley Taylor: A bridge over the Dee.

The CHAIRMAN: The decision in that *Dee and Mersey Junction* case is a decision on the point before us now, whether right or wrong; it is under the same Acts of Parliament?

Stephens: Yes. I have to take myself out of that decision.

Worsley Taylor: The supervisors are to sound the river as often as they may be required to do so by or on behalf of the corporation of Chester, or by or on behalf of the company, not the commissioners. The mayor and corporation of Chester are, by a later Act, made commissioners; it is either the corporation or the company. It is a power to both.

Mr. PARKER: Are the corporation petitioners?

Worsley Taylor: Yes; and their *locus standi* is not disputed.

Stephens: I am informed that the promoters go through property of the corporation; therefore they could not object to their *locus standi*. It is plain from sec. 14 of 17 George II., cap. 28, that the corporation of Chester would have no power to enter into possession of the lands, and therefore upon the face of the Act itself a distinction is drawn between the duties and responsibilities imposed upon the commissioners and those imposed upon the corporation of Chester. As to the Mersey case, that was decided in 1865, which was an early period in the history of this Court, and, at that time, the tendency of the Court was rather against petitioners than in favour of letting them in. If that decision were absolutely binding upon you now, one would expect to find that it had been followed since that day, but as a matter of fact the commissioners have been heard over and over again since that date upon questions affecting the river Dee; and, not merely have they been heard, but they have been especially recognised as the proper parties to be heard.

The CHAIRMAN: Is there a case in which you have been heard after the *locus standi* has been objected to?

Stephens: I am not in a position to say.

The CHAIRMAN: You might have had other grounds for a *locus standi* besides those now set up.

Stephens: At all events we have been heard in similar cases since 1865. To the Court of Referees, in 1865, it was distinctly represented that our duty was a very simple duty with which that bill did not interfere; but could you conceive anything more calculated to interfere with the efficient performance of our duty, than this proposal to put in the river itself these great piers and this swing bridge? The decision of 1865 must be taken with all its surroundings. The petition there was a joint petition by the corporation of Chester and the commissioners; and the Court, having both sets of people before them, apparently anxious to say the same thing twice over, said: "We are not doing any substantial injustice by excluding the Dee commissioners, because we have the corporation, who can say everything the others want to say." But that is not the position now. This is not a joint petition, and the corporation of Chester cannot say everything on behalf of the commissioners. The corporation, supposing they got large concessions in respect of Chester interests, might not be disposed to assist much upon the navigation part of the case; even supposing it to be raised in their petition they might not take the trouble, being that the position of the commissioners was not affected. But sec. 19 of 14 George III., cap. 8, says that you are to interpret the Act in such a manner as shall be best conducive to the preservation of the navigation. There is a company over which, at all times, it has been necessary to exercise control, because the Dee company is not primarily a navigation company; it is very largely a land reclamation company, and it is more largely a land reclamation company than a navigation company. The position of 1865 is not the position of to-day. Here you have a body which was created at the time the original undertakers were constituted, and re-created 50 years afterwards by the Act of George III., whose powers have been carefully continued in every Act from that day to this, and they come before you petitioning upon a matter which vitally affects the navigation; and yet that body, with a continuous existence of 150 years, called into existence to preserve and continue the navigation, when they seek to be heard against a bill which obviously places an obstruction in the navigation, are told that they have no interest whatever in the matter.

The CHAIRMAN: Is not the state of things this; that they have no general power of preserving the navigation: that they are only appointed to see that the Dee company do a certain thing? I do not say that it is conclusive against you, but, as a matter of fact, is

it not the case that they have no original power themselves?

Stephens: As a matter of fact they have very full powers. As I have shown from the old Acts, these commissioners were called into play as referees, if a dispute arose between the company and any landowner upon the banks who complained of damage.

The CHAIRMAN: That would not give them a right to be heard.

Stephens: That is one of the powers given them.

The CHAIRMAN: The argument is this, is it not, that you are supervisors of the operations of the Dee company, and the construction of this bridge would interfere with the duties imposed upon the Dee company which you have to supervise?

Stephens: Yes; and prevent us carrying out the statutory duties we have to perform, because, if this Act were passed, suppose we went to the company, and said, "You have not got your proper depth of water," we should be shut out.

Mr. CHANDOS LEIGH: What you rely on is sec. 47 of the Dee Standard Restoration Act, 1851, which provides "That all the powers and authorities, clauses and things, in the said recited Acts relating to the said undertaking for recovering and preserving the navigation of the river Dee which are not hereby repealed or varied, or which are not inconsistent herewith, shall be and the same are hereby ratified and confirmed, and the same shall continue in full force, anything in this Act contained to the contrary thereof notwithstanding."

Stephens: Yes.

The CHAIRMAN: I think many of the members of the Court would have been in your favour but for the previous decision. With regard to sec. 47 of the Dee Standard Restoration Act, 1851, it only refers to existing powers, it does not give any fresh ones; it does not say that you are to preserve the navigation generally; it only re-enacts those powers and authorities for preserving the navigation which already existed.

Stephens: Then I ask you to take into consideration sec. 34 also of the Act of 1868.

The CHAIRMAN: Could you refer us to any case in which, notwithstanding that decision in 1865, you have been heard under precisely similar circumstances?

Stephens: We have been heard many times, but we have not been objected to in the same way that we were objected to in 1865, and the issue of 1865, though resembling, is not identical with the issue of to-day. Since 1865 Parliament must have thought that we have something to do with the Dee, because in the

River Dee Company Amendment Act, 1866, passed since 1865, they inserted a general and over-riding clause for our protection (sec. 34). "Nothing in this Act contained shall abridge, alter, diminish, or take away any of the existing jurisdictions, powers, rights or privileges of the river Dee commissioners, under or by virtue of the Dee Standard Restoration Act, 1851, or any other Act relating to the company." Clause 13, while professing to save our powers, subjects the whole of our Acts to the powers of this bill. That should take us out of the decision of 1865. There is a proposal to make the powers of this bill over-ride the whole of our statutory powers, whatever they are.

Worsley Taylor (in reply): The commissioners are mere policemen. They come in on a certain event happening. All the authority is in the Dee company. Sec. 14 of 17 George II., cap. 28, which I have already read, provides that if the proper depth is not kept up, the commissioners may enter upon and take possession of the lands vested in the company; so all the provisions with regard to the corporation of Chester, with regard to supervisors, with regard to notice, with regard to affidavits, lead to this, that when action is to be taken, it is to be taken by the commissioners. The facts now are precisely the same as those upon which the Court gave their decision in 1865. The grounds of objection were similar, although the one petition was signed by two parties, viz., the corporation of Chester and the river Dee commissioners, and no objection was urged by the promoters to the *locus standi* of the corporation of Chester. Here you have the same state of facts with this difference, if it can be called a difference, that there are two petitions instead of one. Instead of a joint petition of the corporation and the Dee commissioners, there is a separate petition of the Dee commissioners and a separate petition of the corporation. In that case the corporation's *locus standi* was not objected to, as it is not here; the commissioners' *locus standi* was objected to, and it was disallowed. Here we have admitted the *locus standi* of the corporation, who exercise rights over the river Dee and who will go into all questions of navigation, taking every possible objection, which these people could urge if they were before the Committee. That case was followed by the case of the *Connah's Quay, Railway and Docks (Wrexham, &c., Railway) Bill*, 1865 (Smethurst, 173), in the same year. The Court, therefore, is asked to reverse two distinct decisions upon the same matter.

Mr. PARKER: Were the commissioners petitioners again in that case, and was their *locus standi* disallowed?

Worsley Taylor: Yes; although not a crossing that was also an affecting of the river.

The CHAIRMAN (to *Worsley Taylor*): I do not think we need trouble you any further. It is impossible to get over that decision in 1865, even if we wished to do so, and we are not convinced that it was wrong. I say nothing about the second case to which reference has been made.

Locus standi of River Dee Commissioners Disallowed.

Agents for Petitioners, *Martin & Leslie*.

Petition of (2) THE GREAT WESTERN RAILWAY COMPANY.

Railways—Competition—Running Powers—Rival Route thereby Created—Promoters, as Joint Owners with other Companies of Railways communicating with Proposed Railways—Colliery Traffic—Railway Company as Owners of Wharves and Quays—Obstruction of Access to Wharves by Railway Bridge—Subscription by Promoters to Quay in Competition with Quays of Petitioners—Conservancy Board—Representation—Rhondda and Swansea Bay Railway Bill, 1883 (3 Clifford and Rickards, 330) explained and corrected.

The bill authorized the construction of a short railway from Chester to Connah's Quay, on the river Dee, by the Manchester, Sheffield and Lincolnshire railway company. The Great Western railway company claimed to be heard on the ground of competition, which they alleged would be caused by the bill in three ways, viz. (1) by the fact that the promoters, being joint owners or joint controllers of the railways of the Cheshire Lines Committee, and in communication with the Committee's railway at Manchester (and therefore by means of that railway being at Chester) took power, by clause 32 of the bill, to run over the railways of the Wrexham, Mold and Connah's Quay railway company, by which means it was contended they would be enabled to carry traffic themselves between Chester and Wrexham in competition with the Great Western railway company; (2) that the bridge across the Dee proposed to be constructed by the promoters would ob-

struct the navigation of the river and the access to wharves owned by the petitioners higher up the river at Saltney, thus increasing the competition between their wharves at Saltney and the existing wharves at Connah's Quay; (3) that the bill authorized the promoters to subscribe £50,000 to the works at Connah's Quay, thereby enabling a fresh company to compete with the Great Western company's wharves at Saltney. The promoters contended that the above allegations only showed an improvement of existing competition, and traversed the right of the petitioners to be heard as to any interference with the river. (*Rhondda and Swansea Bay Railway Bill, 1883, 3 Clifford & Rickards, 330, explained and corrected*):

Held, that the petitioners were entitled to be heard generally upon the ground of competition.

The *locus standi* of the petitioners was objected to, because (1) the petitioners do not allege in their petition, nor is it the fact, that any lands, railways, stations, or other property belonging to them, or in which they have any interest, are sought to be taken, used, or interfered with under the powers of the bill; (2) the petitioners are not entitled to be heard against the bill on the ground of competition as suggested in paragraph 4 of their petition, there being no such competition (if any ever could arise, which is denied) as would entitle the petitioners to be heard under S. O. 130, according to practice; (3) the petition discloses no ground for a hearing according to practice.

Pember, Q.C. (for petitioners): The petition alleges that "It is proposed to carry one of the proposed railways across the river Dee by a bridge of two opening spans on the swivel principle. That the undertaking of the Manchester, Sheffield and Lincolnshire company (hereinafter called the company) extends from Manchester to, among other places, Sheffield, Retford, Lincoln and Great Grimsby, and is many miles distant from the nearest part of the proposed railways. That the company's railway communicates at Manchester with the railways of the Cheshire Lines Committee, which extends thence to Chester, Stockport, Liverpool and other places. That the Cheshire Lines Committee is formed of representatives of the company and the Great Northern and Midland railway companies, and the company is,

therefore, by means of the undertaking of such Committee, practically at Chester at the present time. The Cheshire Lines Committee is a corporation having rolling stock of its own, and a manager of its own, and having a common seal. By joint ownership, or joint control, or by being represented on the board of the Cheshire lines, the Manchester, Sheffield and Lincolnshire company is at Chester. That the railways proposed to be authorised by the bill are an extension of the railways of the Cheshire Lines Committee, and your petitioners submit that if such extension was wanted, which it is not, it should have been promoted by the Cheshire Lines Committee, and not by the company. That your petitioners are, under Parliamentary sanction, owners and workers of a port, harbour, or shipping place, on the river Dee at Saltney, some miles above the proposed site of crossing the river Dee; such port is fitted up with every convenience, and there are warehouses and steam-tugs subsidiary thereto, upon the construction and efficient maintenance of which accommodation, your petitioners and their predecessors have expended, and do now expend, large sums of money, and a very considerable trade, both export and import, is now carried on there; and your petitioners' port of Saltney is in direct and most convenient communication with the extensive system of your petitioners' railway, and with Wrexham and the district around. Your petitioners are advised that the construction of the bridge across the river Dee in the manner proposed will most injuriously interfere with and obstruct the navigation of that river (which is evidently intended to be made subservient to the traffic of the company) and will involve loss and injury to your petitioners and the owners of vessels trading to Saltney and the other wharves and shipping places on the river. If the bill is sanctioned in its present form, it will have the effect of releasing the River Dee company from the statutory obligation under which they at present lie, to maintain every part of the navigable channel of the river between the city of Chester and the sea of a certain depth for ships and vessels to come and go to and from the said city. That by clause 32 of the bill it is proposed to authorise the company, and any company or persons for the time being, working or using the railways of the company, or any part thereof, either by agreement or otherwise, to run over, work and use with their engines, carriages and waggons, officers and servants, whether in charge of engines and trains, and for any other purpose whatsoever, and for the purposes of their traffic of every description, the

railways of the Wrexham, Mold and Connah's Quay railway company." So under the 32nd clause, suppose this new line is used by the Great Northern or the Midland, as it well might be, as soon as the line was constructed in the hands of one of the partners of the Cheshire Lines Committee, the two other constituent bodies of the Cheshire Lines Committee would immediately use, by running over it, this new line of the Manchester, Sheffield and Lincolnshire, and the moment they did that they would have running powers all the way by the Connah's Quay lines to Wrexham, so that you would have working from Chester to Wrexham, not only the Manchester, Sheffield and Lincolnshire, but in all human probability, the Great Northern and the Midland too. But our case of competition would be sufficient, provided the Manchester, Sheffield and Lincolnshire company were working from Chester to Wrexham; our line goes from Chester to Wrexham. Nor is that all, because by clause 34 of the bill, as we state in our petition, "it is proposed to authorise the Wrexham company to run over, work and use with their engines and carriages, officers and servants, the railways by the intended Act proposed to be authorised, or either of them, or any part or parts thereof, for the purposes of traffic of every description," and so on. "By clause 37 of the bill it is also proposed to enable the company, with the authority of three-fourths of the votes of their shareholders present in person, or by proxy, at a general meeting of the company specially convened for that purpose, from time to time to subscribe any sums which they may think fit, not exceeding £50,000, towards the construction of the sidings, quays, or other works at Connah's Quay in the County of Flint, being a portion of the undertaking of the Wrexham company authorised by 'The Wrexham, Mold and Connah's Quay Railway Act, 1882.' That your petitioners have at great cost constructed an extensive system of branch railways in connection with their main line from Shrewsbury to Chester throughout the mineral districts, in which the railways and authorised railways of the Wrexham, Mold and Connah's Quay company are constructed or are intended to be constructed, and in connection with which the railways hereinbefore described and sought to be authorised by the bill are projected, and by the accommodation provided by your petitioners they have not only developed the mineral resources of those districts but liberally met requirements of the traffic as these have from time to time arisen, and they are able, by means of their railways and the Chester and Birkenhead railway (of which they are joint owners), to afford facilities for the shipment and

transhipment of coal and other articles on the river Dee, and also, what is of much more importance, to afford the very best means of communication not only with Birkenhead, which is the great harbour of export for the mineral produce of those districts, but also with Chester, Warrington, Manchester and other places." By this proposal not only would traffic be carried in one hand from Chester to Wrexham, and *vice versa*, by the Manchester, Sheffield and Lincolnshire, as against us; but in all probability the Great Northern and the Midland would do the same thing. Those companies are new competitors, and therefore in every sense this is a new competition. It is not only competition between Wrexham and Chester, but we run to Manchester, and here you have the Manchester, Sheffield and Lincolnshire railway by means of this Connah's Quay line competing with us for all the mineral wealth of this district. The main traffic of this district is mineral traffic. From a great many of the works in the direction of the Ffrwyd iron and coal works to Chester, it would be shorter to go by this proposed new route than ours.

The CHAIRMAN: What are the distances between Wrexham and Chester by the two lines?

Pember: From Wrexham to Chester we are 12 miles 12 chains, and they are 19 miles 40 chains. We are 7 miles shorter than they are, but that is not such a difference as to prevent them from competing with us in the carriage of goods merchandise and minerals. Seven miles is nothing for traffic of that sort to go round, and when we come to the Westminster colliery, which is a large and important colliery, the distance by the Great Western is 15 miles 20 chains, and by the Wrexham, Mold and Connah's Quay line it is 17 miles 5 chains. Then take Brymbo to Chester; there is a matter of 5 miles difference in a distance of 21 miles, but a difference of distance such as that would not prevent competition with reference to minerals and goods, or passengers either.

The CHAIRMAN: It seems there would be a fresh local competition established?

Pember: Yes. There is another point in the competition: at Connah's Quay at present there are no works, the rails come to the edge of the Dee, and there the thing stops, and therefore the competition between Connah's Quay and Saltney for the export of the products of the mineral valley has been one which the Great Western company have been able to bear, but as soon as the Manchester, Sheffield and Lincolnshire company come in and spend £50,000 upon Connah's Quay, a very different state of things will arise, and for the first time a com-

will be set up, not by the Connah's company themselves, but by the Manchester and Lincolnshire company, a competitor with us. As to the race with the river, that touches upon on in this way, that any hindrance to navigation up to Saltney is an inducement to go to Connah's Quay.

CHAIRMAN: By the bill improvements are made at Connah's Quay as I understand? : No; the improvements at Connah's were sanctioned the year before last in a report forward by the Connah's Quay directors in their interests, but the bill induces the promoters to subscribe £50,000 for them. Now, as to the interference with the Dee. We have spent a very large sum upon Saltney; it is eight miles from the crossing of this river: and if it were cut, the crossing of the river would be very important, because the mouth of the river is the key to the port of Saltney. Saltney is an important port to the Great Western

Even if there were any conservators of the river, which I say there are not, they do not represent me, neither do the Dee company, nor the Dee commissioners represent me.

CHAIRMAN: Does it matter to your case what particular powers and authorities of the Dee company are? What you have to deal with is the point that the Dee company or the Dee commissioners, or any body who have powers over the river for this purpose, do not represent you.

: Yes; that is the point. I think I have said enough to show that the Dee company are not conservators of the river, and even if they had been I should still contend that I am entitled to be heard, because in the *North-Western Railway Bill*, 1871 (2 Clifford & Sons, 149), though there were the Tees conservators petitioning against the bill, certain objections of wharves were also heard. The duty of the Dee company is to keep up the river. The fact that two petitioners presented similar petitions is not a bar to both of them being heard, because if only one was heard, he might be settled with, and not withdraw the petition.

Worsley Taylor (for promoters): As to the question as to the river, the case of the *Rhondda and Swansea Bay Railway Bill*, 1883 (3 Clifford & Sons, 330), is on all fours with this case, and is decisive against the petitioners. The only point left to be decided is, are there conservators for the river Dee?

: As to that case, the fact of there being conservators is given in the marginal note as a reason for the Great Western rail-

way company being refused a *locus standi* on the ground of obstruction to the river, but it is not borne out by any expression of opinion by the Court.

The CHAIRMAN: It rather startled me to be told that I had been a party to a decision to the effect that where there were conservators of a river, persons interested in wharves and docks could not be heard. There have been many cases in which we have given a *locus standi* to a man whose access to business premises has been interfered with, notwithstanding that there has been a road authority.

Worsley Taylor (in reply): This case is stronger than most of those where there have been conservators, because not only are the River Dee company bound to maintain the navigation generally, and keep the river at a certain depth, but there are supervisors appointed by that company and the corporation to see that it is done, and if it is not done the River Dee commissioners can enforce it by penalties and entry upon the lands of the company.

The CHAIRMAN: The commissioners are appointed to do a certain thing only, i.e., keep up the depth of the river. There are no penalties enforceable against the River Dee company if they neglect anything else except that particular thing. Supposing a ship sinks and the River Dee company leave it there. I take it that no penalty could be enforced against them for not removing it; the penalties are only leviable in respect of omission to do a particular thing. In all the Acts relating to the Dee, the Dee company are not called conservators.

Taylor: With regard to the next point, viz., the power in the bill for the promoters to subscribe money to Connah's Quay as bearing on the question of competition, this is not a new competition. Connah's Quay already exists. The matter is *res judicata*, and the authorised subscription by our company is at most only improving an existing competition.

The CHAIRMAN: The petitioners say that a new element is introduced by a new company coming with £50,000, so as totally to change the character of Connah's Quay.

Taylor: As far as competition is concerned it makes no difference out of whose pocket the additional funds are drawn. With regard to the general case of competition, the proposed railway is a short piece from Chester to Connah's Quay. The Great Western railway is not at Connah's Quay, and clearly if the matter stopped there the petitioners could not be heard, and therefore the whole of their case turns upon the running powers conferred (clause 32) upon the promoters, and any

companies working or using their railway, over the Wrexham, Mold, and Connah's Quay railway between Wrexham and Connah's Quay. The petitioners at the most would be entitled to a limited *locus standi* against those running powers.

The CHAIRMAN: Independently of the question of distance, the petitioners say that by the new lines, and with the assistance of the running powers, there would be competition between Wrexham and Chester *via* Connah's Quay on the one hand, and the Great Western line between Wrexham and Chester on the other. You must not take it that we can leave altogether out of consideration the new line as a factor in the competition between Wrexham and Chester.

Taylor: That would only entitle the petitioners to be heard against the running powers.

The CHAIRMAN: No; because the case put is, that competition would arise between Wrexham and Chester, half by means of running powers, and half by means of the new line.

Taylor: The difference in distance between Chester and Wrexham by the two routes will be 7 or 8 miles, the Great Western route being 12 miles, and the route *via* Mold being 19½ miles.

The CHAIRMAN: Take the case of traffic from one of the other collieries, *e.g.*, Brymbo or Westminster to Wrexham.

Taylor: Competition already exists between those points.

The CHAIRMAN: The case is that the competition is altered and increased by giving a new company running powers over one of these existing lines.

Mr. CHANDOS LEIGH: Do the Great Western company ship coal at Saltney?

Pember: Yes; in large quantities. A large part of the business at Saltney is the import of iron ore and the export of coal.

Taylor: We are not going to compete with Saltney. Connah's Quay exists already.

The CHAIRMAN: We think the petitioners are entitled to a general *locus standi* on the ground of competition.

Locus standi of Great Western Railway Company Allowed.

Agent for Petitioners, Mains.

Petition of (3) MERCHANTS, SHIPOWNERS AND OTHERS TRADING ON THE RIVER DEE.

Railway Bridge—Obstruction to River—Traders, Merchants and Shipowners — Quays and

Wharves above and below Bridge—Conserrancy Board—Representation.

Practice—Accuracy of Description of Petitioners questioned upon Argument—Point how far raised by General not Specific Objection.

The construction of the railway bridge authorised by the bill was further objected to by 94 persons described "as merchants, shipowners and others trading on the river Dee." They alleged injury to their business caused by obstruction to the river by the proposed bridge. Special objection was taken to those of the petitioners who did not own business premises abutting on the river above the proposed bridge, especially to those who were shipowners:

Held, that all classes of the petitioners were equally entitled to be heard, *i.e.*, traders and shipowners as well as owners of premises, as to injury to the navigation and consequently the trade of the river, but that looking to the words of the petition, those petitioners only were entitled to be heard who were interested as owners or traders, &c., above the proposed bridge (the Court leaving the agents to agree upon the signatures to be retained on the petition).

Counsel for the promoters having raised the point in argument that the petitioners were not all owners, &c., of premises as described in the petition, and having called upon counsel for the petitioners to go through the list of signatories and point out those who were correctly so described, the latter declined to do so on the ground that none of the objections to the *locus standi* of the petitioners raised the point as to accuracy of the description of the petitioners. Counsel for the promoters relied on the general words in objection (1) that "the petitioners do not allege in their petition nor is it the fact that any lands, houses or other property belonging to the petitioners will or can be taken under the powers of the bill," as sufficiently raising the point:

Held, that the promoters' counsel could not, upon this general allegation, put the peti-

tioners to the proof of the accuracy of their description in the petition, such description being *prima facie* assumed by the Court to be accurate, in the absence of any specific allegation in the objections to the contrary.

The *locus standi* of the petitioners was objected to, because (1) the petitioners do not allege in their petition nor is it the fact that any lands, houses, or other property belonging to the petitioners will or can be taken or interfered with under the powers of the bill; (2) the petitioners are not the conservators of the river Dee and have no control over the banks of the river or the navigation thereof, and have no rights thereon; (3) they do not represent any class of traders, freighters, or others, who, according to practice, are entitled to be heard against the bill with respect to the proposed bridge across the river Dee or any other matter therein; (4) the petition discloses no ground for a hearing according to practice.

Pembroke Stephens, Q.C. (for petitioners): The petition is signed by 94 persons who represent the whole trade of the river Dee, with the exception of the Great Western Railway company. We complain of the obstruction of the river Dee by the proposed railway bridge. Besides the obstruction caused by it, the bridge will form a junction between the railway systems on the north and south sides of the river Dee, and will enable the railway companies by means of the Wrexham, Mold and Connah's Quay railway to concentrate all the traffic at Connah's Quay, and destroy the trade at our wharves.

Worsley Taylor (for promoters): A preliminary objection is that some of the petitioners are not proprietors of premises on the river at all. I put the petitioners to proof on this point, and with that object we must go through the list.

Stephens: As there is no individual objection to any individual signature, I object to taking the petitioners name by name.

Taylor: My first objection is, "The petitioners do not allege in their petition, nor is it the fact that any lands, houses or other property belonging to the petitioners will or can be taken under the powers of the bill."

Stephens: The objections should have traversed the fact, as in the case of tramway frontagers, that such and such petitioners (naming them) were owners of wharves, &c., on the river. Objection (1) is only the ordinary general objection, and does not suggest an objection taken in argument against individual names. How can the petitioners be expected, without

specific notice, to prove their titles of ownership? The course adopted by the promoters' counsel is without precedent.

Mr. HINDE-PALMER: Objection (1) does not raise the point that is now raised by the promoters. It merely denies that any lands, &c., belonging to the petitioners will be interfered with.

Stephens: Paragraph 5 of the petition alleges that "Your petitioners are, as merchants, ship-owners, ship captains, pilots and others trading on the river Dee, deeply interested in the navigation thereof, and in the quays and wharves on the banks of that river." That allegation is not specifically traversed in the objections. If this was to be gone into we ought to have had due notice of it in the regular way.

Taylor: I ask for the ruling of the Court upon this point.

The CHAIRMAN: I was under the impression that the point was distinctly raised, but on looking at the objections I am not sure that it is so. In the petition there is a distinct allegation that the petitioners are owners of, or interested in, wharves which will be affected. The first objection is only the ordinary one, and could never have been intended to raise the issue which Mr. Taylor now raises; it is a mere general objection. If we are to give a ruling, I do not think the objections are sufficiently specific, according to the practice of the Court, to entitle the promoters' to call upon the petitioners' counsel to prove that each of the petitioners owns or is interested in wharves or other property on the river. We shall assume, *prima facie*, that they are properly described, and that they properly allege that they are interested in those wharves.

Taylor: I submit that at all events the ship-owners should be struck off the petition.

Stephens: A shipowner who carries on his business upon this river, trading up and down, is as much interested in its navigation as a wharf-owner or other trader. (*North-Eastern Railway Bill, 1871, 2 Clifford & Stephens, 149; Isle of Wight, &c., Railway Bill, 1871, Ib. 212; Severn Tunnel Railway Bill, 1872, on Petition of the Gloucester, &c., Canal Company, Ib. 245*). There were conservators in the latter case, and the objection was taken that the petitioners were represented by them. There is a series of cases on the *Lancashire and Yorkshire Railway Bills*, in which traders have been heard where their access has been interfered with, the last of which is the bill of 1883 (3 Clifford & Rickards, 294). The principle is the same with regard to a river as a road.

Taylor (in reply): I submit, on the authority of the *Rhondda and Swansea Bay Railway Bill*,

1883 (3 Clifford & Rickards, 330), that the petitioners are not entitled to be heard.

The CHAIRMAN: I am bound to say that if that was the result of the case, it is rather inconsistent with previous cases.

Taylor: I submit that you will at any rate strike out petitioners who have not alleged that they have a *bond fide* interest in the river above the proposed works, e.g., shipowners at Connah's Quay, which is below the proposed bridge and cannot possibly be affected.

Stephens: They are interested in the trade up and down the river.

The CHAIRMAN: I think, looking at paragraph 5 of the petition, the *locus standi* should be confined to people above the bridge. That paragraph alleges, "Your petitioners are interested in the navigation, and in the quays and wharves on the banks of the river. Such navigation extends for several miles above the site of the proposed bridge."

Stephens: The address of the petitioners does not indicate their trade interests, which may extend to the upper as well as the lower river.

The CHAIRMAN: We do not look at a man's address. We look at his interest. If he can prove, though his address is at Connah's Quay, that his interest is above the proposed bridge, he will be included among those whose *locus standi* is allowed, leaving the names that will stand to be arranged by the Parliamentary agents on either side. The *locus standi*, so far as ownership is concerned, must be confined to people above the bridge; so far as trading is concerned, we think that it should be on the same principle, that is to say, that it should be confined to persons interested in the trade above the bridge. With that intimation, we are of opinion that the parties should be able to settle the names.

Locus standi Allowed to such of the petitioners as are owners of wharves, &c., above the proposed bridge, and to such of the petitioners as are interested in the trade above the bridge.

Agents for Petitioners, Martin & Leslie.

Petition of (4) THE CREDIT COMPANY, LIMITED.

Mortgagees in Possession of Land Scheduled under Bill—Deterioration in Value of Security—Distinct Interests from Mortgagors.

The petitioners were mortgagees in possession of certain lands scheduled for compulsory purchase under the bill. They alleged that they had distinct interests from their

mortgagors, who also petitioned and whose *locus standi* was conceded, and that their security would be deteriorated by the compulsory purchase by the promoters of the lands in question:

Held, that they were entitled to a general *locus standi* as mortgagees in possession.

The *locus standi* of the petitioners was objected to, because (1) the bill does not authorise the taking of any lands, houses, or other property belonging to the petitioners; (2) the lands referred to in the petition are the property of the River Dee company, who have petitioned against the bill, and the Credit company have no right as mortgagees also to be heard against it; (3) the petitioners have no interest in the land referred to distinct from, or in addition to the River Dee company, and are not entitled to be heard as mortgagees upon an apprehended depreciation of their security; (4) the petition discloses no ground for a hearing according to practice.

Pembroke Stephens, Q.C. (for petitioners): We allege that we are mortgagees of the River Dee company, and that we are mortgagees in possession, and having the legal estate of the land, part of which is scheduled by the bill, and will be taken summarily by the promoters for the purposes of it.

Mr. CHANDOS LEIGH: You think the bill will diminish your security, and that you have a distinct interest from the River Dee company?

Stephens: Yes; and it is so alleged in our petition.

Worsley Taylor (for promoters): I admit that the allegations are sufficient, and I do not see that we have raised the objection that the petitioners are not mortgagees in possession. That being so, I am inclined to admit their *locus standi*, although I have been unable to find any precedent upon the point.

Mr. CHANDOS LEIGH: In the *Lancashire and Yorkshire Railway Bill*, 1883 (3 Clifford & Rickards, 294), some of the petitioners were mortgagees, and it was objected that a mortgagee, unless in possession, had no right to be heard. That would seem to imply that a mortgagee, who is in possession, has a right to be heard.

Locus standi of the Credit Company Allowed.

Agents for Petitioners, Tahourdin & Hargreaves.

Agents for Bill, Wyatt, Hoskins & Hooker.

MILFORD DOCKS (JUNCTION RAILWAY) BILL.

petition of (1) FRANCIS MOWATT AND LIEUT.-COL. GREY.

14th March, 1884.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE-PALMER, M.P.; Mr. PARKER, M.P.; Sir JOHN DUCKWORTH; and the Hon. E. CHANDOS LEIGH, Q.C.)

Docks, Extension of Time for Completing—Natural Harbour stopped up by Authorised Works—Landowners complaining of Delay in executing Works—Value of Land Depreciated by Existing Works—Past Legislation, Complaint of—Railways Clauses Act, 1863, s. 20.

In 1874 a dock company was incorporated with power to construct various works, and in four subsequent Sessions the company obtained further powers (*inter alia*) to extend the time for the compulsory purchase of land and the completion of the undertaking. Among the authorised works was one for the erection of a pier or embankment across the mouth of a natural harbour, with openings so as to admit of the construction of docks inside this harbour. The docks, however, had not been made, and it was alleged that, meanwhile, the pier had destroyed the harbour, materially depreciating the value of the surrounding property. The company now promoted a bill for a further prolongation of time. It was opposed by a mortgagee and a landowner who had not received notice to treat, and who alleged that their property had been prejudicially affected through the stopping-up of the harbour, and that this injury would be continued and increased by the prolongation of time now sought:

And, that a general allegation of injury to property from the non-completion of authorised works, special injury not being shown to any particular trade, afforded no ground for a *locus standi* against an extension of time bill.

The *locus standi* of the petitioners was objected to, because (1) no land, property, right, or interest of theirs will be taken or affected as a consequence of the extension of time for the

compulsory purchase of lands and completion of works sought by the bill; (2) the petition does not show that Francis Mowatt is the mortgagee of any land over which any powers are sought by the bill, and, even if he were so, his position would not be in any way affected by the bill; (3) the allegations in the petition as to the effect of the works constructed by the promoters would not, even if true, entitle the petitioners to be heard; (4 and 5) the petitioners are not the local authority or inhabitants of any town injuriously affected, nor are they shareholders in the Milford docks company; (6 and 7) the bill contains no provision affecting the petitioners, who show no ground or interest entitling them to be heard.

Balfour Browne (for petitioners): The bill is one which, *inter alia*, extends the time for the construction of works by the Milford docks company. The company were incorporated in 1874, with power to construct various works, including a wet or floating dock at or near Milford Haven, in or near the estuary, or pill, called Hubberston Pill, with graving docks on the westerly and easterly side of the lock entrance to this dock. In 1875, the company were authorised to amend their original design and construct further works, among others, an embankment, or wall, across the mouth of Hubberston Pill, with an opening, or openings, and wet docks or graving docks inside that embankment. In 1880 the company were authorised to revive and extend the powers of compulsory purchase of land, and extend the time for completion of works. Again, in 1882, Parliament extended the time for the completion of works to a period of three years, and increased the company's capital powers. In 1883 the company obtained further money powers, and they now once more ask for a prolongation of time to complete their works.

The CHAIRMAN: The petitioners are not owners of land required for the purposes of the works, and as to which they have received notices to treat?

Browne: No, in that case we should not be entitled to a *locus standi*; and the Railways Clauses Act, 1863, provides (sec. 20) that, when the question of compensation to a landowner comes to be decided, the arbitrator shall take into consideration, not only the value of the land at the time when the notice to treat was served, but any damage the land owners may have suffered by reason of delay in the construction of works, so that a landowner in such a position would be protected against the consequences of delay. Where, however, a proprietor's land is not taken but is injured by the prolongation of time, and he will get no compensation,

the matter is entirely different. Mr. Mowatt is mortgagee; Colonel Grey is an owner of property affected; neither by any possibility can receive compensation for the injury they are receiving.

The CHAIRMAN: As the property in which they are interested is not touched or affected, they could not have been heard against the original bill. Is it not, therefore, rather a strong thing to say that they can be heard against a prolongation of time bill?

Browne: Consider what is being done in this case. A natural harbour has been taken for the purpose of making a dock. That natural harbour was used by all persons having property on the verge of it, and amongst others by Colonel Grey's tenants and lessees and by Mr. Mowatt's mortgagors.

The CHAIRMAN: Much the same grievance might be alleged in all cases of railways?

Browne: The non-completion of a railway is not quite the same thing as the shutting up of a natural harbour to which everybody has access. If a man had premises on the banks of a natural harbour, and it was proposed to block the mouth of that harbour, he and all other persons affected would be entitled to be heard. The petitioners might have had a *locus standi* against the original bill on that ground.

Mr. PARKER: Did the petitioners ask for a *locus standi* against any of these Acts?

Browne: They were going to oppose the original bill, but an agreement was come to. Even now they are of opinion that if the dock were made and opened it would be an advantage to the town; but instead of making a dock the company have built a pier across the entrance, and so turned into dry land what was originally a natural harbour. Our property was thereby seriously injured, and the continuance of this nuisance for another five years, without the possibility of compensation, is surely an injury entitling us to be heard.

Mr. HINDE-PALMER: You are complaining of past legislation.

Browne: No; the past is done with. We have suffered from the ten years' delay, but we are now seeking to oppose any further delay. (*Metropolitan Railway Bill, Petition of Metropolitan Inner Circle Completion Railway Company, 1875, 1 Clifford & Rickards, 175; and Glasgow Corporation Water Bill, 1875. Ib. 24.*)

The CHAIRMAN: The petitioners in the latter case were manufacturers or traders whose trade would be stopped by a prolongation of time. Here it is a mere allegation of general injury by persons not carrying on a particular trade.

Browne: There used to be wharves on the land mortgaged to Mr. Mowatt, but they were shut up owing to the obstruction to the harbour.

If the obstruction were removed, people would use the natural harbour and give Mr. Mowatt and Colonel Grey the true value of their land, which is now depreciated by the obstruction.

Mr. CHANDOS LEIGH: In the first case you quoted, the Metropolitan Inner Circle company had powers and rights conferred upon them by statute with which the extension of time would interfere.

Browne: These petitioners have a common law right equal to any that might be given by statute. A landowner who cannot get his rent is injured by an extension of time bill, just as much as the lessee of a wharf.

Pembroke Stephens, Q.C. (for promoters), was not called upon.

The CHAIRMAN: If a railway company cannot raise funds, and the works are stopped, landowners in the neighbourhood have no *locus standi*. In this case, if a *locus standi* were given to the petitioners, we should have to give it to everybody in Milford. We think that according to the practice of the Court, the petitioners are not entitled to be heard.

Locus standi Disallowed.

Agents for Petitioners, *Baxters & Co.*

Petition of (2) MERCHANTS, SHIPOWNERS, SHOP-KEEPERS, MECHANICS, AND INHABITANTS GENERALLY OF MILFORD.

Dock—Extension of Time Bill for Dock Works—Inhabitants, Insufficient Representation of—S. O. 134, Construction of—Inhabitants, Right of to Appear where there is Local Authority—Past Legislation, Complaint of.

Practice—Insufficient Allegations as to Injuries affecting under S. O. 134—Objections, not Raising Point covered by S. O.—Court will require Compliance with S. O. in Petitions, notwithstanding Silence of Objections.

Out of a population of 2,500, 473 inhabitants of Milford petitioned, under S. O. 134, against a bill extending the time for the completion of dock works, but failed to allege distinctly, in the terms of the S. O., or in words equivalent, that the town would "be injuriously affected" by the bill:

Held, that the petitioners (1) did not sufficiently represent the town; and (2) had not sufficiently alleged injury under the S. O.; and *locus standi*, therefore, disallowed.

In argument it was urged that S. O. 134 gave to the Court a discretionary power to admit

either the local authority or the inhabitants of a town or district alleged to be injuriously affected, provided that there was a substantial representation of inhabitants by the petitioners.

Sed qu. (per Cur.), whether the true construction of the S. O. is not that inhabitants can only be heard where, at the time the S. O. was framed (in 1863), there was no local authority to represent them.

The promoters contended that the petitioners had not alleged, in the terms of S. O. 134 under which they claimed a hearing, that their town would be injuriously affected by the bill. The petitioners replied that as this point was not taken in the objections, it could not be used in argument.

(Per Cur.) Whether the point is or is not taken in the objections, the Court must be guided by the Standing Orders, and must see that a petition contains the necessary allegations, either in terms or in effect.

The *locus standi* of the petitioners was objected to, because (1) they are not the local authority having the management, nor the inhabitants, of any town or district injuriously affected by the bill; (2) no property, right or interest of theirs will be taken or affected; (3) the petitioners complain of the effect of works constructed under the authority of past legislation, a matter into which they are not entitled to go; (4) they do not represent the general trade of the town of Milford or Hakin, and are not entitled to be heard as traders; (5 and 6) the bill contains no provision affecting them, and they do not show any interests entitling them to be heard.

Balfour Browne (for petitioners): We claim a *locus standi* under S. O. 134, upon allegations of injury to the town and trade of Milford, similar to those made in the last petition. Under the S. O. the Court has full discretion to admit either the local authority or inhabitants.

The CHAIRMAN: The petition is signed by 473 persons. To take the case out of our previous decision, you would have to prove that these petitioners represent the inhabitants.

Browne: I understood the decision of the Court in the previous case to be that private individuals have no right to represent inhabitants, but I do not know whether you would hold that there must be a majority of a town to represent inhabitants.

The CHAIRMAN: I think there must be a very considerable proportion.

Pembroke Stephens, Q.C. (for promoters): And they must allege that the town would be injuriously affected by the bill. Here they make no such allegation.

Browne: The objections to our petition do not raise that point.

The CHAIRMAN: Whether the point is taken in the objections or not, we must be guided by the S. O.; we must see that either in terms or in effect you allege that the town would be injuriously affected by the bill.

Mr. PARKER: You say the town has very much deteriorated, and I think it may be gathered from the petition that it will continue to deteriorate if the bill passes.

Browne: Yes; and under the S. O., if you are convinced that there is a substantial representation of inhabitants, you can allow them to appear without being represented by the local authority.

The CHAIRMAN: I am not sure whether the proper construction of the S. O. is not that we are to hear the inhabitants of a district where there is no local authority.

Browne: The S. O. does not say so.

The CHAIRMAN: I think it must be so construed. If there be a local authority, they are the proper representatives of the town.

Browne: The S. O. must mean that either inhabitants or local authorities may be admitted, because there is no place or district in the country without a local authority.

The CHAIRMAN: Was that so when the S. O. was framed?

Mr CHANDOS LEIGH: S. O. 134 was framed in 1863.

Browne: It is true that was before the Act of 1872,* which created local authorities in every district, but as the House issues the S. O., every year, I submit that S. O. 134 would have been modified had the intention been to restrict its operation to the local authority.

The CHAIRMAN: Have the local authority taken any action in this case?

Browne: They are neutral as a body, but many of the members have signed the petition. We ask that the proposed extension of time for the works should be limited.

The CHAIRMAN: The petition appears to be more like a complaint of past legislation. It does not specifically allege that the proposed prolongation of time will injure the petitioners; we are left to gather this.

Browne: What we say in effect, is, that delays should not be allowed in the future as in the past. As to the local authority, they cannot

* Public Health Act, 1872 (35 & 36 Vict., c. 79).

appear against a private bill without the consent of the Local Government Board, who may be refusing their consent. I submit that the petitioners are entitled to be heard upon the principle that Parliament looks to those who are primarily interested to petition. The local authority would be affected through the reduction of rates owing to a depreciation in the value of property; but the persons primarily injured are inhabitants who have to pay rates.

The CHAIRMAN: Running my eye over the signatures, I should hardly say that the petition represents the inhabitants of an important place like Milford.

Browne: The whole population of Milford is about 2,500, of whom, deducting young persons, 473 must be a very fair representation.

The CHAIRMAN: We think that neither are the allegations in the petition sufficient, nor are the signatures sufficient, to convince us that the petitioners are within the S. O.

Locus Standi Disallowed.

Petitions of (3) SAMUEL LAKE and (4) TRUSTEES
IN BANKRUPTCY OF THE ESTATE OF LAKE AND CO.

Bankrupt's Estate—Bankrupt, Interest of, distinct from that of his Trustees in Bankruptcy—Preamble, Inaccurate Recitals in — Railway, Property in, and possession of, Disputed—Legal ownership—Permissive Powers to Purchase Railway from Trustees and Others interested—Arbitration, Statutory.

In the year 1882 Mr. Lake obtained a lease of the undertaking of the Milford Haven dock and railway company. He afterwards entered into an agreement with an estate company for an underlease of the railway to them, but the validity of this agreement was disputed. Lake subsequently fell into difficulties, as was alleged, by becoming security for money lent to the promoters, the Milford docks company, a company distinct from, though similar in name to, the Haven dock and railway company. In 1883 the Milford docks company obtained an Act for the appointment of an arbitrator to settle, among other questions, the claims and priorities of holders of debenture stock, some of which had been issued in excess of the company's powers. Since their incorporation the company had obtained various Acts to increase their

capital and extend the time for the completion of works, and now sought for permissive power to absorb the railway leased to Lake and for a further prolongation of time. Separate petitions were presented by Lake and by his trustees in bankruptcy, the former claiming to have an interest distinct from that of his trustees, on the ground of an agreement come to, and only awaiting confirmation by the Chancery Division of the High Court, for annulling the bankruptcy and revesting the estate in him. Both petitions contained substantially the same allegations of injury arising to the bankrupt's estate through (1) the proposed absorption of the railway by the promoters; (2) a recital in the bill and corresponding clauses treating the estate company as having a possessory title to the railway; and (3) the proposed extension of time. Evidence having been given by the petitioners to show that the title to the railway was not one of the matters referred to arbitration:

Held, that Lake was represented by his trustees in bankruptcy and could not be heard in the same interest apart from them; (2) that, though no compulsory powers of purchase were sought by the promoters, the legal estate in the railway in question being vested in the trustees, they had a right to a *locus standi* against the preamble and any clauses which recognized antagonistic rights in the estate company; and (3) that the petitioners could not be heard against the proposed extension of time for the completion of authorised works.

The *locus standi* of Samuel Lake was objected to, because (1) no property, right, or interest of his will be taken compulsorily under the bill; (2) the property, rights, powers, and interests of the Milford Haven dock and railway company, which were leased to the petitioners, as well as other leasehold property, have been parted with by him to the Milford Haven railway and estates company, limited (hereafter called the estate company), and he has no interest therein entitling him to be heard; (3) the aforesaid property was leased to the petitioners and his partner, Mr. T. W. Taylor, trading as Lake and Company, but the petition is not signed by Mr. Taylor, nor does it purport to be the petition of

Lake and Company, and the petitioner is not entitled to be heard upon a petition, signed only by himself, in respect of property, rights, and interests belonging to the partnership; (4) the petitioner is not the owner of any existing debenture stock nor of any of Lloyd's bonds or other securities of the company, nor even supposing him to have been so, would he be entitled to be heard upon his petition against the bill in that capacity; (5) the petitioner is admittedly a bankrupt, and consequently all his property and rights are vested in the trustees in bankruptcy of his estate; (6, 7, and 8) he is not the local authority, is not affected by any provision in the bill, and shows no interest entitling him to be heard.

The *locus standi* of the trustees in bankruptcy of Lake and Company was objected to, because (1) they are not interested in any property liable to be taken or affected under the bill; (2) they are not creditors of the company upon Lloyd's bonds; even supposing them to be so, or otherwise to be creditors of the company, the petitioners would not be entitled to be heard in that capacity; (3) they show no interest entitling them to be heard.

Balfour Browne (for both petitioners): Mr. Lake states that in connection with his partner, Mr. Taylor, he leased, in 1882, the undertaking of the Milford Haven dock and railway company, and subsequently they contracted for the completion of the works of the Milford docks company. Unfortunately, at the request of the directors of that company, he became security for a large sum of money lent to the company on the collateral security of a certain amount of debenture stock, under the belief that such debenture stock had been issued by the company *bond fide* and within their powers. It was found that the issue was *ultra vires*; and Mr. Lake, after having spent a large sum in carrying out the contract was compelled to stop work, and seek relief in the Bankruptcy Court. Arrangements, however, have since been made, and now only await confirmation by the Court, for annulling the bankruptcy, and revesting the estates in the petitioner. By the bill the Milford docks company seek power to absorb the undertaking of the Haven dock and railway company; to construct further works; and to issue further debenture stock, without limit to the amount, in order to carry out the decisions of an arbitrator appointed under the Company's Act of 1883. Besides being a large holder of debenture stock, the petitioner holds a large number of Lloyd's bonds, and submits that these should have priority over all the shares or stock of the company, a great portion of the capital having, he believes, been applied to

purposes wholly unconnected with the authorised undertaking. Mr. Lake is lessee not only of the Haven dock and railway undertaking, but of the whole of the land upon which the dock is to be constructed, and a large portion of other property in Milford and Hakin. And he alleges that the bill will be the means of sacrificing his property, and preventing any *bond fide* effort to restore to the town its prosperity and trade, which have been ruthlessly destroyed by the omissions and neglect of the promoters.

The CHAIRMAN: There is a petition from Lake's trustees. Can we hear both? The interest affected must be in one or the other, and we cannot allow two parties to be heard in the same interest.

Browne: Mr. Lake alleges that he has a separate interest arising under an agreement between him and his trustees for revesting in him the estate in bankruptcy. As far as the trustees are concerned, they are bound by the agreement, but it will not absolutely take effect until confirmed by the Chancery Division. If a *locus standi* were given to the trustees and not to Mr. Lake, he might not have a *locus standi* after the confirmation of the agreement by the Court.

The CHAIRMAN: Upon the termination of the bankruptcy, would not the benefit of any *locus standi* given to the trustees accrue to him? Suppose a *locus standi* is given to a landowner, and he dies before the bill comes on, will not his successor be entitled to appear?

Browne: Yes.

The CHAIRMAN: It would be an easement which would go with the land. I think you may rest upon the case of the trustees. I see there are cases showing that anybody succeeding to the rights of another person would be entitled to stand in the shoes of that person.

Browne: The trustees' case may be taken as identical with Mr. Lake's case. There can be no question that the railway was vested in Mr. Lake, and on the bankruptcy, vested in the trustees. There was an agreement for a lease from Mr. Lake to a Milford estate company, but the company repudiated it, and it is not valid.

The CHAIRMAN: There is a further point, that the powers of the bill to treat for the purchase of the railway from its owners, whoever they may be, are not compulsory, but merely permissive.

Stephens, Q.C. (for promoters): We ask for merely permissive powers to treat with the persons interested in the railway. Clause 21 enables the promoters on the one hand, and the Great Western, the Midland, the London and North-Western, the Milford Haven dock and railway company, the Milford Haven railway

and estate company, and the trustees of Lake and Taylor on the other hand, to enter into arrangements with regard to the construction and management of the railway. Then, by clause 22, there is permissive power for the promoters of the Milford Haven dock and railway company, and the Estate company, to amalgamate.

Broune: The preamble recites that the Milford Haven railway, which we say is ours, is vested in the Estate company; and then clause 22 enables the Estate company to amalgamate the railway with the promoters. We clearly have a right to be heard against that incorrect recital, followed up by clauses giving effect to it.

Stephens: The Estate company cannot amalgamate with the undertaking of the promoters anything they have not got. Besides, this is a question included within the arbitration authorised in 1883.

Broune: No; we have sent in our claim to the arbitrator, and this railway is not included.

Mr. Francis Heritage, solicitor for the trustees, examined by *Broune*, stated that the matter submitted to the arbitrator was as to certain lands in which Messrs. Lake and Taylor were interested and which were taken for the purposes of the docks; the arbitrator had nothing to say to the railway. There was an agreement for a lease of the railway from Lake and Taylor to the Estate company, but that agreement had been repudiated by the Estate company, and was now in litigation. The railway was not now being worked, and it was difficult to say who was in possession. He contended that it was in the possession of the trustees. At all events the legal estate was in them.

Mr. CHANDOS LEIGH: The bill seems to recognize the trustees of Lake and Taylor, because, by clause 21, the promoters propose to enter into traffic arrangements with them.

The *CHAIRMAN*: The legal estate in this railway at all events is in the trustees. There is an agreement for a lease of the railway, which, they say, has not been acted on by the estate company, and which may or may not be capable of enforcement. But if, as seems clear, the trustees are the legal owners, they must be entitled to a *locus standi* against that part of the preamble which recites that the railway is the property of somebody else. They are also entitled to a *locus standi* against clauses 21, 22, and 23, and so much of the preamble as relates thereto.

Broune: Ought we not to be allowed a hearing against the proposed extension of time?

The *CHAIRMAN*: I do not think we can give you a *locus standi* against that part of the bill.

Locus standi of Samuel Lake, Disallowed.

Locus standi of trustees in bankruptcy of the estate of Lake and Company Allowed against clauses 21, 22, and 23 of the bill, and so much of the preamble as relates thereto.

Agents for Petitioners 1, 2 and 3, *Baxters & Co.*

Agents for Trustees of Lake and Company, *Wyatt, Hoskins & Hooker.*

Petition of (5) JOSEPH NELSON.

Dissentient Shareholders, Locus Standi of—Distinct Interest of Ordinary Shareholders—S. O. 64 (Proprietors' Meeting, as to Bills Originating in Lords)—S. O. 131 (Shareholders not heard unless they have Distinct Interests)—S. O. 132 (Dissenting Shareholders to be heard)—Construction of S. O.'s Governing appearance of Shareholders.

Practice — Petition, not Alleging Dissent of Petitioning Shareholder—Company's Meeting held after Petition Lodged.

A dock company promoted a bill which, *inter alia*, proposed the creation of new debenture stock. At the meeting of proprietors, called under S. O. 64, to sanction the bill, Nelson, an ordinary shareholder, dissented. He now petitioned on the ground that the interests of the ordinary shareholders were prejudiced by the proposed issue of debenture stock. It was objected that he did not in his petition allege that he had dissented at the proprietors' meeting, and had no distinct interest entitling him to appear. It appeared, however, that the meeting in question had been held after the last day for the deposit of the petition:

Held, that although the petitioner had no interest distinct from that of ordinary shareholders, he was entitled to appear under S. O. 132, having dissented, in the terms of that S. O., at the Wharncliffe meeting of his company.

(*Per Cur.*) S. O. 131 and 132 must be read separately in one sense, but together in this sense—that the words "Where a bill is promoted by an incorporated company" in S. O. 131 must be read as if they stood also at the commencement of S. O. 132.

locus standi of the petitioner was to, because (1) the bill has been read to the proprietors of the Milford company, at a special meeting con- pursuant of S. O. 64, and approved as required by that S. O.; (2) the petitioner has not any separate or distinct interest from the interests of the other shareholders of the company, and is not entitled as a shareholder to be heard against the bill; (3) he has no distinct interest in the objects and purposes of the bill as entitles him to be heard.

Parliamentary agent (for petitioner): The petitioner holds a large number of original shares in the promoters' undertaking, and his interests are distinct from those of the company, the directors and the several classes of shareholders. He alleges that it would be prejudicial to the interests of the shareholders to authorise an increase in the amount of the stocks B. and C. in the manner proposed by the bill. As the petitioner attended at the meeting of the company at which the bill was read, and dissented and voted against it, he is now entitled to be heard under S. O. 131.

Q.C. (for promoters): The petition says that Mr. Nelson attended the meeting and dissented.

A: He could not say it, because the meeting was called pursuant to S. O. 62, was on February 25, and the last day for depositing petitions was February 22. In the *Tramway Bill, 1880* (2 Clifford & Rickards, 273), a member of the Court said they must grant a *locus standi* to a dissentient shareholder.

A: A contrary decision was given in the *Extension Mineral Railway Bill, 1878* (2 Clifford & Rickards, 86). There are cases in which the Court took the view that S. O. 131 and 132 are distinct, each carrying a *locus standi*. In other cases the Court seem to have taken an opinion that these S. O. are to be read together.

CHANDOS LEIGH: In the *London and North-Western Railway Bill, 1875, on the Petition of the London and North-Western Railway Company and Others* (1 Clifford & Rickards, 100), preference shareholders were admitted on the ground that their interests were distinct from those of the general body of shareholders.

CHAIRMAN: I take it that S. O. 132 applies to any class of shareholders, not necessarily preference shareholders.

A: I submit that the two S. O. should be read together, otherwise they are inconsistent. It could hardly have been intended in

one S. O. to say that shareholders should be heard independent of the company only in cases where they have distinct interest, and in another S. O. to say that shareholders may acquire a *locus standi* by merely going to the meeting and dissenting.

The CHAIRMAN: I take it that the two S. O. must be read separately in one sense, but together in this sense—that the words at the commencement of S. O. 131: "Where a bill is promoted by an incorporated company," are to be read as if they stood also at the commencement of S. O. 132. S. O. 132 could not have been intended to give the proprietor of any company a right to be heard against any bill brought in by another company if he has attended at a meeting of his own company called either to assent or dissent to that bill; it must apply to the case of an incorporated company of which the dissentient is a shareholder. We think the petitioner is clearly entitled to be heard under S. O. 132.

Locus standi Allowed.

Agent for Petitioner, Sandes.

Agent for Bill, Rees.

NORTH AND SOUTH WOOLWICH SUBWAY BILL.

Petition of THE METROPOLITAN BOARD OF WORKS.

16th May, 1884.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE-PALMER, M.P.; Mr. PARKER, M.P.; Mr. MELDON, M.P.; and Hon. E. CHANDOS LEIGH, Q.C.)

Subway, Extension of Time for Construction of Authorised—Additional Capital, Essential to Carrying out of Scheme—Metropolitan Board of Works Promoting Bill for making Ferry alongside Subway—Competition, New or Developed—Complaint against Past Legislation.

The bill was one for extending the time for the construction of a subway authorised in 1874, and for raising additional capital. The Metropolitan Board of Works were promoting a bill in Parliament (*Metropolitan Board of Works (Thames Crossings, &c.) Bill, 1884*) for establishing a ferry close to and alongside of the authorised subway of the promoters, and they complained that the

power of raising additional capital contained in the bill would have the effect and was for the purpose of enabling the promoters to obtain heavier compensation from the Metropolitan board of works for establishing their proposed ferry (which would be free of toll) in competition with the promoters' subway. It was argued on behalf of the petitioners that the raising of further capital, which the bill authorised in addition to the extension of time for construction, being essential to the completion of the subway, which would otherwise have to be abandoned, in effect made the bill a competing scheme with their own, and entitled them to be heard on the ground of competition, although the promoters' subway had been authorised in 1874, and their own scheme for a ferry was now for the first time before Parliament. *Contra*, it was urged by the promoters that the bill at most involved a development of authorised competition in the hands of the promoters:

Held, that, although the petitioners could not have been heard according to practice against a mere extension of time bill, inasmuch as the promoters were by the bill authorised to raise additional capital, without which they could not complete the subway, the petitioners were entitled to be heard generally upon the ground of competition, as if the promoters' scheme were now for the first time before Parliament.

The *locus standi* of the petitioners was objected to, because (1) no land, property, rights, powers, authorities or privileges of the petitioners are sought to be taken or interfered with by the promoters under the powers and provisions of the bill; (2) the petition discloses no such injury, nor in fact any injury, to the inhabitants of the metropolis, which would result from an extension of time being granted for constructing the promoters' authorized works, as entitles the petitioners to oppose such extension of time. The bare allegation that the inhabitants will be injuriously affected, does not give the petitioners a right to be heard against the bill; (3) a pending application by the petitioners to Parliament for powers to provide additional means of communication across the river Thames, free of toll, below

bridge, and thereby to carry on a ruinous competition with the promoters' authorized undertaking, which may form the basis of a claim against the petitioners for compensation (albeit a good ground for the promoters opposing such application) does not give the petitioners a right to be heard against the bill. Their admitted object in seeking to be heard is to deprive the promoters of a perfectly legitimate claim against them in respect of damage to arise entirely out of their own aggressive acts towards the promoters; (4) the provisions of clauses 10 and 12 of the bill are merely permissive powers to enable the petitioners, if they think fit, to purchase the promoters' undertaking by agreement, and to raise and apply money for the purpose, but do not impose any obligation or liability on the petitioners, and do not give them a right to oppose the preamble or clauses of the bill; (5) neither the inhabitants of the metropolis nor the petitioners are injuriously affected by the bill, nor have they respectively any interest in the bill to entitle them to a hearing according to practice.

Cripps (for petitioners): The powers of the promoters for the construction of a subway were obtained in 1874, but nothing effective has been done towards its completion, and the bill is one of several extension of time bills in connection with the scheme. The petitioners, the Metropolitan Board of Works, have now a general jurisdiction over the crossings of the Thames, *e.g.*, the bridges which were formerly in private hands are now under our jurisdiction, and by the *Metropolitan Board of Works (Thames Crossings, &c.) Bill, 1884*, we are in the present Session asking Parliament for powers to establish a ferry crossing (which will be free of toll) almost alongside of the promoters' projected subway. Against that bill the promoters have petitioned, and we do not object to their *locus standi*. This bill is not only for an extension of time for constructing the subway, but also for additional capital. Without that additional capital they could not proceed with the works, but the more probable result will be that they will not proceed with the works at all, but will found upon their additional powers a claim to heavier compensation from the Metropolitan Board of Works.

The CHAIRMAN: The petitioners claim a *locus standi* not only in respect of jurisdiction but as having a competitive scheme. Do the promoters admit that the ferry proposed by the Metropolitan Board is competitive with their subway? If so, we might avoid the necessity of deciding the question of jurisdiction.

Soutar, Parliamentary agent (for promoters): The bill of the Metropolitan Board of Works

competition with our authorised scheme, a bill of ours cannot be said to be a competitor so far as they are concerned, as we have already obtained powers to construct our railway and this is not a bill for construction, merely for an extension of time, and, secondly, for an increase of capital, and, therefore, the Metropolitan Board of Works are not complaining of past legislation. They were not in Parliament in 1874, when our scheme was authorised.

: In 1874 the Metropolitan Board were in a position to raise the question of competition, as they were not then promoting a competing scheme before Parliament.

CHAIRMAN: Take the case as between two railways. If one railway had got its bill passed and was now coming for an extension, the promoters of a new railway could not stand up against the bill.

: There is this difference here, that the promoters are coming for additional capital without which they could not proceed, and, therefore, the scheme may be said to be authorised *novum*. In such a case a new railway would be entitled to be heard.

CHAIRMAN: Would not that, according to the principle, be a mere extension of existing authorised competition?

: Let me put this case. Suppose a company comes to come and occupy the ground, asking a very small capital, and the bill passed and the bill is opposed. If a *bond fide* party of the same kind came for a competing scheme in a subsequent Session, and the *bogus* company came before the time for an extension of time bill, with really sufficient capital to carry out the original *bogus* scheme, I contend that a question of competition would be introduced, in fact, substantial competition for the first time arise, and that both could be entitled to be heard against the bill on the ground of competition. I may concede that, if the *bogus* competitor were merely for an extension of time, it would not confer a right to be heard upon the party.

MELDON: Your argument is that, as it is the right for the first company to carry out the consequence of the smallness of their capital and the second company coming forward with a competing scheme proceeding on sound grounds, as a matter of principle the latter ought to be allowed to urge that the bill of the first company should not be introduced as to throw you overboard?

: Yes.

CHAIRMAN: Can you refer us to any case where we have given a *locus standi* to

promoters of a new scheme in competition with a scheme for which a bill has been already obtained, when the promoters of the authorised scheme came for an increased capital?

Cripps: I refer the Court to the *Plymouth Dock (Devonport) Water Bill*, 1876 (1 Clifford & Rickards, 254). There the main objection to the *locus standi* of the petitioners was the same as here, viz., that they were in effect complaining of past legislation.

The CHAIRMAN: There the urban authorities were petitioning. It was not a mere case of competition.

Mr. MELDON: Would you be satisfied with a limited *locus standi*?

Cripps: No. The petitioners claim to be heard generally. The cases of the *Bristol Port and Channel Dock Bill*, 1871 (2 Clifford & Stephens, 120), and the *Musselburgh and Dalkeith Water Bill*, 1874 (1 Clifford & Rickards, 106), are in point.

Mr. MELDON: Is there any of the subway constructed?

Cripps: The promoters have spent some capital, and purchased the easement under the Thames, but they confess that they cannot carry out the scheme without additional capital. The original capital was £60,000, with power to borrow £20,000. They now ask for power to raise £30,000 additional capital, with corresponding borrowing powers.

Soutar (in reply): All the cited cases are distinguishable from the present case. All the injury the petitioners seem to apprehend by their petition is a possible claim by us against them for compensation in the event of their obtaining the power of establishing a new means of communication. That is not a matter for discussion on this bill. It will be a matter for the Committee on the bill promoted by the Metropolitan Board of Works. We should be heard against that bill, and, if the Committee thought fit, they would give us compensation. The question of competition is not directly raised in the petition.

The CHAIRMAN: We think the petitioners are entitled to a general *locus standi*.

Locus standi of Metropolitan Board of Works Allowed.

Agents for Petitioners, Dyson & Co.

Agents for Bill, Durnford & Co.

NORTH LONDON TRAMWAYS BILL.

Petition of (1) NEW RIVER COMPANY.

28th April, 1884.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE-PALMER, M.P.; Sir JOHN DUCKWORTH; Mr. BONHAM-CARTER; and the Hon. E. CHANDOS LEIGH, Q.C.)

Tramways, Authorised, Use of Steam Power on—Water Company, Opposing—Injury to Water Mains, Bridges, &c., through Use of Steam Power on Tramways.

Practice—Locus Standi against Clause Limited by Understanding between Parties.

A tramway company with an authorised system, sought power to use steam or mechanical power upon part of their system, within the district of a water company. The latter petitioned against the proposed user, alleging (*inter alia*) that additional provisions would thereby be necessary to protect their mains, pipes, works, and bridges from injury. It was objected that they were sufficiently protected by general legislation incorporated with the company's original Acts, and in the bill; but by agreement a *locus standi* was allowed to the petitioners against the clause which sanctioned the use of steam, such *locus standi* being limited, by arrangement between the parties, to any interference by such clause with the petitioners' bridges.

The *locus standi* of the New River company was objected to, because (1) no land, mains, pipes, works, or property of the petitioners will be taken or interfered with; (2) the bill empowers the promoters to use steam or mechanical power for working certain tramways which they are authorised to construct, and have already constructed, within the parishes of St. John, Hackney, and St. Mary, Stoke Newington, the promoters being already authorised to use steam or mechanical power on other portions of their system; the bill does not authorise the construction of any new tramways, or give any further or additional powers to the promoters to break up or interfere with streets, roads, or any bridges belonging to the petitioners, or to interfere with any mains, pipes, or other works of theirs; (3) the promoters deny the petitioners' statement that the Tramways Act, 1870, did not contemplate the working

of tramways by steam or mechanical power as now proposed by the bill. The provisions of that Act, which are incorporated with the promoters' special Acts, are applicable in the case of bills which authorise the use of steam and mechanical power on tramways, and the petitioners would be entitled to no further protection in respect of their mains, pipes, bridges, or other works than is afforded by those provisions if the promoters had originally in their special Acts obtained the right to use such motive power upon their tramways within the said parishes; (4) the promoters' system of construction is adapted for the use of steam or mechanical power, and they deny that the use of steam or other mechanical power will be attended with any additional risk to the safety of the petitioners' mains, pipes, or works, or necessitate any alteration in the position thereof, or of any of their bridges; but were it otherwise the petitioners are already sufficiently protected by existing legislation; (5) no powers, rights, privileges, or authorities in the petitioners to open or break up any road for the purposes connected with the laying down and maintaining of any of their mains, pipes, or works are abridged or taken away by the bill; (6) the petitioners are in no way injured by the provisions of the bill, and show no ground entitling them to a *locus standi*.

Vaughan Richards, Q.C. (for petitioners): The promoters concede us a limited *locus standi* as to any damage caused to our bridges by working powers under clause 4 (permitting use of steam, &c.).

The CHAIRMAN: Our order must be "*locus standi* disallowed, except as to clause 4."

Stephens, Q.C. (for promoters): A *locus standi* against clause 4 generally may raise a dozen other questions besides that agreed upon as the ground of *locus standi* here—namely, injury to the petitioners' bridges through our working with steam over those bridges. I do not object to a technical *locus standi* being granted to the petitioners against clause 4, upon the understanding that, in Committee, they will only use their rights to the extent mentioned.

Richards: Certainly.

Locus standi of New River Company Disallowed, except against clause 4.

Agents for Petitioners, Baxters & Co.

Petition of (2) METROPOLITAN BOARD OF WORKS.

Tramway, Authorised—Proposed Substitution of Steam for Animal Power on Tramway—

Local Authority, Right of to Oppose—Tramways Act, 1870, Provisional Order under—Tramways Provisional Order, Powers under, Extended by Act—Consent of Local Authorities thereby Dispensed with—S. O. 22 (Consents to Tramway Bills)—S. O. 134 (Locus Standi of Municipal Authorities and Inhabitants).

In 1879, the North London tramway company, with the consent of the local authority, the Metropolitan Board of Works, and of various road authorities whose districts were affected, obtained a Provisional Order sanctioning a system of tramways partly inside and partly beyond the metropolitan area. In 1882 and 1883, the company extended their powers by Acts. Their original bill of 1883 proposed the use of steam or mechanical power on parts of their system both inside and outside the metropolis; but, on the petition of the Metropolitan Board, the company limited this proposal to their system beyond the metropolis. They now promoted a bill to permit the use of steam on their tramway in two metropolitan parishes. The Metropolitan Board again petitioned. It was objected (1) that under S. O. 22 their consent was only necessary to bills for constructing a tramway; (2) that public interests were adequately protected in this case by the Board of Trade and the vestries as the road authorities, the thoroughfares affected being local and not arterial thoroughfares; and (3) that they had not distinctly alleged any injurious affecting of the metropolis in the terms of S. O. 134, on which they relied:

Feld, that the petition sufficiently alleged injury under the S. O., and that, upon a proposal to do in 1884 what the petitioners had succeeded in preventing in 1883, the Metropolitan Board were entitled to appear, if, in their opinion, the use of steam within the metropolis should be under their control as an independent authority, as well as under that of the Board of Trade and the vestries.

The *locus standi* of the petitioners was objected to, because (1) the bill does not authorise the laying down of any tramway within the

metropolis so as to require the consent of the petitioners thereto; (2) the bill does not take away, abridge, or affect any rights, powers, privileges, or jurisdiction of the petitioners (who are not a road authority), but (so far as it relates to the metropolis) is merely a bill to enable the promoters by using steam or mechanical power to work their undertaking more efficiently and economically than at present; (3) the bill is one for enabling the promoters to use steam along certain roads within the metropolis, along certain portions of which roads, or adjacent roads, just outside the metropolis, the promoters are already empowered to use steam or mechanical power. The bill contains all those provisions which Parliament considers necessary and sufficient for the protection of the public traffic along public highways where the use of steam or mechanical power is sanctioned, and the petition discloses no ground for imposing extraordinary provisions on the promoters in this case; (4) no injury to the inhabitants of the metropolis or to the petitioners is alleged entitling the petitioners to be heard.

O'Hara (for petitioners): The point now raised has not previously been before the Court. Under the Tramways Act, 1870, the North London tramways company in 1879 obtained a Provisional Order through the Board of Trade, the consent of the Metropolitan Board, as the local authority under the Act of 1870, being a condition precedent. That Order did not contemplate the use of steam. Parliament provided means for amending the Provisional Order by a subsequent Order, also obtained through the Board of Trade, and also requiring the consent of the local authority. Instead, however, of taking that course, the company last Session promoted a bill which would have enabled them to use steam power within our jurisdiction. The Metropolitan Board petitioned, and the company in consequence withdrew their application to use steam within the metropolis, not venturing then to question our right to a *locus standi*. Now they contend that, although a local authority can refuse its consent to the construction of a tramway, it has no right to be heard against anything proposed to be done to such tramway after construction. But any amendment to the company's original Order would have required our consent; and they cannot oust our jurisdiction by substituting a bill.

Pembroke Stephens, Q.C. (for promoters): It must not be forgotten that in 1882 we obtained an Act, which over-rides the Provisional Order and reconstitutes the company upon a Parliamentary basis. The Provisional Order is, there-

fore, antecedent history which has nothing to do with the present question.

Mr. CHANDOS LEIGH: In 1883 the Metropolitan Board petitioned, and the result was the withdrawal of the proposed steam powers within the metropolitan area. In 1884, the company ask for steam powers, notwithstanding anything contained in the Act of 1883?

O'Hara: Yes; relying on S. O. 22, which only says that the consent of the local authority is necessary in the case of a bill for the construction of a tramway. We therefore now claim to be heard under S. O. 184, on the ground that our district will be injuriously affected by the bill. Unless we are so heard, it would be within the power of any tramway company to defeat the intention of Parliament, because it would only be necessary for the company to construct its tramway under a Provisional Order, and afterwards promote a bill for the use of motive power on this tramway when, according to the arguments now urged, the local authority could not be heard. This is a proposal to introduce steam on tramways within the metropolis; and the promoters also propose to repeal the power we have under this Act of 1883, to make bye-laws with respect to the use of steam. It would be a strange thing to say that, under such circumstances, we should be excluded from the Committee. (*Accrington Corporation Tramways Bill, 1882, 3 Clifford & Rickards, 117.*)

Stephens (in reply): The bill only seeks power to use steam on a small portion of our tramways, at the extreme verge of the metropolis, and to repeal a few words in our Act of 1883, which would have the effect of preventing the use of steam continuously throughout our system.

O'Hara: Those words were deliberately inserted to get rid of the opposition of the Metropolitan Board in 1883, and owing to our petition.

Stephens: In the Act of 1883 we obtained power to use steam on our tramway outside the metropolis subject to the consent of the Board of Trade. The bill enables us to exercise the same power, subject to the same consent, in the parishes of St. John, Hackney, and St. Mary, Stoke Newington.

The CHAIRMAN: The petitioners say that, whatever may be the jurisdiction of the Board of Trade, the Metropolitan Board, as an independent authority, has a right to be heard when you seek for these powers within their district.

Stephens: The question is, whether they are the proper people to be heard. This is not a tramway scheme running in any sense through the metropolis. This is a matter which concerns the road authorities only, and in which the Metro-

politan Board should with the governing. In the case of the Confirmation, No. East London, &c. politan Board made *locus standi* was dies 360). Here the p under S. O. 184, be habitants of the me be, "injuriously af

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Agents for Met Dyson & Co.

Agents for Bill,

HOUSE (LOWER, Petition of COMRO HULL.

16th May, 1884.—(Chairman; Mr. MELDON, M.P.; Hon. E. CHANDOS

River, Improvemen Injury thereby

Port Lower Down—Conservancy Commission, Representation of Municipal Corporation in—Competition between Ports—Abstraction of Traffic by Improvements at Rival Port—Existing Competition, Improvement of—Municipal Corporation, as Owners of Port and of Shipping Dues—Municipal Revenue Diminished by Diversion of Traffic to Neighbouring Port—Representation of Trade by Local Authority.

trading company interested in an extensive system of inland navigation, and also in the port of Goole, sought for powers to deepen and otherwise improve eight miles of the river Ouse near that port, to take from the existing conservators the jurisdiction over this portion of the river, and to levy tolls on passing vessels. The bill was opposed by the Corporation of Hull, on the grounds (1) that as the Ouse and the Humber formed a continuous water-way, the proposed works might cause shoals in the existing deep water channel in the estuary of the Humber, and so seriously interfere with access to the port of Hull; (2) that in the event of such interference, and also of any diversion of traffic to Goole by the proposed improvements there, the petitioners would suffer a direct loss of revenue, they being owners of the port, and entitled to various duties on shipping and on coal; (3) that the proposed dues on keels passing Goole on their way to Hull from the inland navigation, would produce a similar loss of revenue to the petitioners, by encouraging transshipment at Goole instead of at Hull; and (4) that the trade of Hull generally would suffer by the new competition introduced at Goole if ocean-going vessels were enabled to use that port:

2d, that (1) as to navigation, the petitioners were constituents of and represented by the Humber conservancy commission, who had obtained protective clauses in the House of Lords; (2 and 3) that the petitioners did not clearly show any probable loss of revenue under the bill; (4) that they did not represent the traders; and that as there were already docks at Goole, the proposed works would do no more than improve an existing competition.

The *locus standi* of the petitioners was objected to, because (1) no right, power, property or interest of theirs will be taken or interfered with; (2) they are not the conservators either of the river Ouse or of the river Humber. Conservators of these rivers have been appointed by Act of Parliament, and the petitioners have no special interest in either river entitling them to be heard as superseding these conservators or in addition to them; (3) the petitioners are fully represented in the Humber conservancy commission, and have no right to a separate hearing; (4) they do not represent the traders on the rivers Ouse or Humber, whether plying from Hull to Goole, or to places on the Aire and Calder navigation, or elsewhere, and their alleged interests do not coincide with those of the traders on the said rivers; (5 and 6) no grievance is alleged entitling the petitioners to be heard; they seem to apprehend that the port of Goole will compete with the port of Hull more effectually after the improvements proposed by the bill on the river Ouse have been made than at present, but competition between the two ports already exists, and it is not the practice of Parliament to hear petitioners complaining of an improvement in existing competition.

Pembroke Stephens, Q.C. (for petitioners): The promoters of this bill are the Aire and Calder navigation company, who have obtained various powers under old Acts of Parliament and have certain rights of ownership in Goole. They are, in fact, a trading company, but, being a very old company, they are not under the modern obligations to publish returns, or give information to any public department. They are now proposing to execute works extending over a distance of eight miles in the river Ouse, taking conservancy rights within the limits of their works. These are works to deepen, widen and straighten the river, and train the channel by walls and embankments on both sides. They will commence about one mile above the town of Goole, and terminate at the junction of the Ouse with the Humber, and involve an estimated expenditure of £250,000. It is proposed to withdraw from the jurisdiction of the existing conservators the eight miles of river so to be dealt with, and place it under the jurisdiction of the company, who are not a public body, but who carry on business for profit. Though bearing a distinct name, the Ouse is really a continuation of the Humber, forming part of the great navigable water-way to and from the manufacturing towns of Yorkshire and Lancashire. Interested as the petitioners are in this water-way, they allege that the legislation now proposed should not be sanc-

tioned until its effects upon the trade and navigation of the river as a whole, and particularly upon the interests of the port of Hull, have been considered by Parliament. Under a charter of Richard II., granted in 1381, confirmed and enlarged by subsequent charters, the petitioners are entitled to levy jettage, anchorage, and other dues within the port of Hull. They receive £3,000 annually in anchorage dues, are entitled to a tonnage duty on coal brought into the port, have property in the foreshore, and certain old harbour rights, and are large shareholders in the docks at Hull.

The CHAIRMAN: Do the powers sought by the promoters extend to the port of Hull?

Stephens: No. The *locus standi* of the corporation of Liverpool has never been questioned against proposals to execute works in the Upper Mersey. Here the corporation of Hull own their port under charter, levy duties on shipping, have proprietary rights in the foreshore, and are vitally interested in the preservation of the channel, upon the free access to which the prosperity of the town depends. They apprehend that the proposed works will cause shoals and banks, and will otherwise injuriously affect the Humber for a considerable distance below the site of those works, altering, it may be, the position of the existing deep-water channel from the sea, and thereby affecting disastrously the trade of Hull. From its position on the Humber, its docks and railway facilities, Hull is now by far the most convenient port on the east coast. The modern theory, however, is that the further inland you can get your ships the better; and the effect of deepening the Ouse near Goole from 16 to 24 and 26 feet would be that ocean-going ships would pass by Hull and unload their cargoes at Goole.

Mr. CHANDOS LEIGH: There are docks at Goole now?

Stephens: Yes; but they are governed by the depth of water. In future, if these works are executed, an altogether different class of shipping will resort to them.

The CHAIRMAN: Do you say these works would affect your interests as owners of the port or as representing the trade of Hull?

Stephens: In both capacities: we are owners of the port, and should suffer by the removal of the trade. It is true there are Humber conservancy commissioners, but, though they might provide sufficiently for vessels entering the Humber and navigating to Goole, they might neglect the northern channel, upon which depends the access to Hull. The promoters may say that they are not seeking for any powers over the river below Hull; but works carried on continuously for eight miles on the upper

waters cannot but exercise a disturbing influence on the lower channel in a river like the Humber, with its shifting banks and shoals. Hull is largely used as a port of transhipment, and goods not destined for railway now go by keels inland from Hull to the upper waters. Under the bill these keels, without using the docks at Goole, will have to pay a halfpenny a ton to the promoters for passing through their improved navigation. This tax will discourage traffic now transhipped at Hull and forwarded by keels, and will also seriously affect the coal traffic similarly carried on, thereby diminishing our sources of revenue from coal. Besides our coal dues we levy water bailiff and old corporation dues, so that any diversion to Goole of traffic now yielding us revenue is a direct source of injury to the corporation, apart from the general injury to the trade of Hull.

Mr. HINDE-PALMER: Were you heard in the House of Lords?

Stephens: No; but our petition in that House did not contain the allegations we now make.

Mr. CHANDOS LEIGH: The Humber conservancy commissioners obtained protective clauses in the Lords.

Stephens: By agreement the commissioners were empowered to require the promoters "to abate and remove any damage or impediment which may arise to the navigation of the Humber, or any alteration of the existing deep water channels of the river prejudicial to the interests of any port or place thereon, and for the determination of any questions or differences which may arise between the said commissioners and the undertakers as to any such damages, impediment or prejudicial alteration, and for enabling the Board of Trade to hold an inquiry as to the circumstances of the case before giving their decision." We say, however, that these provisions are not satisfactory; and that in any event we should be heard, our interests being distinct from those of the conservancy.

Bidder, Q.C. (for promoters): The corporation of Hull have seventeen representatives out of thirty in the Humber conservancy.

Stephens: It was only by a majority of one that the commissioners assented to clauses, and we say that the commissioners did not properly consider the various interests affected by this scheme. The protection afforded to us by the clauses inserted in the other House is illusory. For example, the commissioners took no action as to the toll or taxing clauses in the bill, their feeling being that questions not affecting the navigation should be dealt with by us.

Bidder: That is matter not alleged in the petition.

The CHAIRMAN: The main question is whether

you or the commissioners are the conservators of the port.

Stephens: We say that they do not represent us and that our interests are distinct.

Mr. MELDON: You have to show us that you have duties and rights over the river beyond those of the conservators.

Stephens: The protective clauses inserted at the instance of the conservators relate to works only; we are affected by the money consequences of those works.

The CHAIRMAN: How do those money consequences affect you more than anybody else?

Stephens: Because our trade is taken away and our tolls are affected. We are also here to consider the results of these works to the trade of the port of Hull, to the capital invested there, and the ratepayers of the town. In another room the corporation of Liverpool are being heard, and were heard for weeks last year, against a proposal to make a ship canal up to Manchester. Yet Parliament is asked to refuse a *locus standi* to the corporation of Hull in a similar case.

Mr. PARKER: Do you say that the corporation of Liverpool are being heard upon obstruction of trade and questions of that kind?

Stephens: Yes; the issue raised is the possible ruin of Liverpool if the ship canal is made.

Bidder: The circumstances in that case differ widely from those here.

The CHAIRMAN: If it were necessary to pronounce any opinion upon the case of Liverpool, we should require to have all the facts before us. Meanwhile, we must go by our own rules and apply them to the case which we have to decide.

Stephens: Our position is that extensive interference with a river, and possible injury inflicted thereby on a port lower down, give a good ground of *locus standi* to the representatives of that port. Abstraction of trade, resulting from such interference, is also as much a case of competition between ports as one between railways. In such cases what the Court looks to is injury, not distance. (*Severn and Wye Railway and Canal Bill, 1869, 1 Clifford & Stephens, 74; Wakefield Water Bill, 1874, 1 Clifford & Rickards, 122.*) The promoters say that the conservators of the Humber have done everything we can possibly want, but the conservators do not represent the trade of Hull, and do not care whether trade goes to Hull, Goole or Grimsby. In fact they are bound to be impartial as between the three ports. Why should a trading company be allowed to obtain jurisdiction in a river like the

Humber behind the backs of the corporation of Hull, who cannot be represented as to the interests of their particular trade by a body interested only in preserving the navigation as a whole?

The CHAIRMAN: The promoters say that the conservators represent the navigation, not trading interests, or the rights of the corporation of Hull to levy certain tolls; and the question is, whether the petitioners represent the traders. Vaguely, they say that they will lose a certain amount of dues.

Stephens: We cannot tell what we shall lose till the proposed works are executed, and the powers conferred by the bill are in operation.

The CHAIRMAN: The petitioners might have told us what sort of ships now use their port, and the average amount a year received from shipping.

Mr. CHANDOS LEIGH: This is a scheme for the improvement of an existing port.

Bidder: And the utmost that can be said is, that it is an improvement of an existing competition.

Mr. PARKER: Can you refer us to any precedents in which a *locus standi* has been given to a port against a bill for improving another port, the allegation of the petitioners being that the effect of the proposed improvements would be to cause fewer ships to come to their port?

Stephens: Improvement generally takes place lower down, so that the ports above the point at which the improvement is to take place have no cause to complain. The peculiarity in this case, as in the Manchester ship canal case, is that the improvements begin higher up, the object being to get the traffic past the lower ports.

Bidder was not called on for a reply.

The CHAIRMAN: We do not think there is any ground for a *locus standi* in this case.

Agents for Petitioners, *Durnford & Co.*

Agents for Bill, *Grahames, Currey & Spens.*

PAISLEY AND DISTRICT TRAMWAYS BILL.

Petition of (1) THE CALEDONIAN AND GLASGOW AND SOUTH-WESTERN RAILWAY COMPANIES, AND THE GLASGOW AND PAISLEY JOINT LINE COMMITTEE.

2nd May, 1884.—(*Before Mr. HINDE-PALMER, M.P.; Mr. PARKER, M.P.; Mr. MELDON, M.P.; Hon. E. CHANDOS LEIGH, Q.C.; Sir JOHN DUCKWORTH; and Mr. BONHAM-CARTER.*)

Railway v. Steam Tramway — Competition — Different Termini—General locus granted.

The bill authorised the construction of steam tramways between Govan, a suburb of and contiguous to Glasgow, and Paisley. The petitioners were owners of a railway between Glasgow and Paisley, and claimed to be heard generally on the ground of competition. The promoters contended that no competition could arise between the railway of the petitioners and the proposed tramways, and that if the Court should decide that there was competition, the petitioners ought only to be heard as to that portion of the proposed tramways which would be between the same points as the petitioners' railway :

Held, however, that the petitioners were entitled to be heard generally on the ground of competition, the proposed tramways being composed of a main line and branches.

The *locus standi* of the petitioners was objected to, because (1 and 2) no lands, works, or railways of theirs will be taken or interfered with by the proposed tramways, which will be laid along the public highways, and will only cross the petitioners' railways by means of the existing bridges, and will not endanger the use of or conduct of traffic upon the said railways; (3) The Tramways Act, 1870 (incorporated with the bill) contains all necessary provisions for protecting the petitioners' railway and canal, and ensuring the stability of the bridges; (4) the petitioners are not the road authority, and have no distinct interest in the public highways interfered with apart from the public generally; (5 and 6) India, otherwise London Street (referred to in paragraph 10 of the petition), is a public highway, and the petitioners' goods station or mineral depôt, which is in another street and at a considerable distance off, will not be interfered with or its access blocked up, and the petitioners are not owners, &c., of any house or warehouse in it; (7) the petition discloses no interest entitling the petitioners to be heard according to practice.

Pember, Q.C. (for petitioners): The bill authorises the construction of a tramway between the burghs of Paisley, Johnstone, Renfrew and Govan. Govan is practically Glasgow, being a populous suburb of Glasgow, although a burgh in itself, so that this will be practically a tramway from Glasgow to Paisley and Johnstone, two important towns. The tramway is 5 or 6 miles long, and the use of steam power upon it is authorised by the bill, and it is through what

is practically an open country, so that it is not like an ordinary tramway for omnibus traffic, but is principally for terminal traffic, and is just like a railway, except that it is carried along a high road, and that the rails are only constructed for tramcars. It is close to the joint line of the Caledonian and Glasgow and South-Western railway companies. There is a station on the joint line at Ibrox, connected with Govan by a little spur line. As regards Ibrox and Paisley, there is a clear case of competition. Tramways compete favourably in some respects with railways, notwithstanding that they are limited in speed, *e. g.*, as to original outlay, as they have not to form an expensive permanent way. The question whether tramways can be said to compete with railways is an open one, having been decided both *pro* and *con* according to the circumstances of individual cases (*North Metropolitan Tramways, &c., Bill*, 1877, 2 Clifford & Rickards, 56).

Mr. CHANDOS LEIGH: That was a tramway company petitioning against a railway company, and the principle of the decision was affirmed in the *Sutton and Willoughby Railway Bill* (*infra*, p. 471).

Pember: I refer the Court to the *North Metropolitan Tramways Bill*, 1874 (1 Clifford & Rickards, 111), and *Great Western Railway Bill*, 1876 (*Ib.* 223), and the *Goole, Epworth and Oveston Railway Bill*, 1883 (3 Clifford & Rickards, 285). There are other points on which we claim a *locus standi* besides that of competition.

Ledgard, Q.C. (for promoters): It has never yet been laid down as a principle that the use of steam or mechanical power on a tramway entitles a railway company to be heard on the ground of competition. It was stated in the *Bury and District Tramways Bill*, 1881 (3 Clifford & Rickards, 101), that if there would be competition as between railway companies between certain points, there might, under similar circumstances, be competition between tramways and railways, but not otherwise. Even if the bill was a railway, there would be no competition in this case, as the tramway and railway will not run between the same points. Can this tramway, running where it does, and not going to Glasgow at all, be held to be in competition with a line starting from Glasgow?

Mr. MELDON: How far is Govan from Glasgow?

Pember: It is a suburb, but joins Glasgow, and is one place with it.

The CHAIRMAN: We think a sufficient case has been made out for the petitioners' *locus standi* on the ground of competition.

Ledgard: I presume the Court will limit the *locus standi* to the part of the tramway in com-

petition with the railway, and not give a general *locus standi*?

The CHAIRMAN: I see the bill authorises 16 tramways.

Pember: It is all one tramway; that is, a main line with branches.

The CHAIRMAN: The *locus standi* must be a general one; I do not see how we could limit it.

Locus standi of petitioners Allowed generally.

Agents for Petitioners, Grahames, Currey & Spens.

Petition of (2) THE GLASGOW AND SOUTH-WESTERN RAILWAY COMPANY.

Practice—Railway Company as Landowners—Compulsory Powers taken by Bill over Lands of Petitioners—Absence of Specific Allegation in Petition to that effect—General Allegation of Interference, how far sufficient.

The bill scheduled certain lands of the petitioning railway company (this fact not being disputed by the promoters), but the petition did not contain any allegation to this effect, but a general allegation that the proposed tramways would "cross over or otherwise affect injuriously the railways, works, and lands of your petitioners, and they wholly object to any such interference:"

Held, that upon this allegation, the petitioners were entitled to be heard generally against the bill.

The *locus standi* of the petitioners was objected to (1) (2) (3) (6) and (7) on similar grounds to those taken in objections (1), (2) and (7) to the *locus standi* of petitioners (1); and (4) because they did not allege that they were frontagers upon any streets through which the proposed tramways were to be constructed and that they would be injured in the enjoyment of their premises or the conduct of their business so as to entitle them to a *locus standi* under S. O. 135; (5) the construction of the petitioners' works would not be interfered with by the construction or use of the proposed tramways as alleged in paragraph 14 of the petition.

Shiress Will, Q.C. (for petitioners): The petitioners are entitled to a *locus standi* on the ground of competition for similar reasons to those upon which petitioners (1) have been

given a *locus standi*, but they have omitted to claim a *locus standi* on that ground in their petition. They do, however, in the petition claim to be heard in respect of physical interference with their railway station, and as landowners.

Ledgard, Q.C. (for promoters): Besides the absence of any allegation as to competition, the petition does not say that we take any of their lands.

Will: Paragraph 2 says, "It is proposed by the said bill to incorporate a company with power to construct the tramways described in clause 5 of the bill, which tramways, or some of them, will cross over and otherwise affect injuriously the railways, works and lands of your petitioners, and they wholly object to any such interference and to any such powers being conferred upon the company."

Ledgard: We have scheduled a piece of their land, not for the purpose of our tramway, but for the purpose of carrying out the widening of a road. They do not object specifically in their petition to our taking their land.

Will: There is clearly an allegation to the effect that the petitioners are landowners, and that their lands are interfered with.

The CHAIRMAN: We allow the *locus standi* of the petitioners.

Locus standi of Glasgow and South-Western Railway Company Allowed.

Agents for Petitioners, Sherwood & Co.

Agents for Bill, Durnford & Co.

SOUTHAMPTON CORPORATION (CEMETERY, &c.) BILL.

Petition of SIR EDWARD HULSE, BART.

6th March, 1884.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE-PALMER, M.P.; Mr. PARKER, M.P.; Sir JOHN DUCKWORTH; Mr. BONHAM-CARTER; and the Hon. E. CHANDOS LEIGH, Q.C.)

Cemetery, Extension of—Building Estate Depreciated in Value—S. O. 5 and 15 (Notices in Bills for Cemeteries, Gas and Sewage Works)—300 Yards' Limit, Covenant to Build Houses within—Effect of, upon Locus Standi.

Practice—Dwelling-house within 300 Yards' Limit of Cemetery—No Allegation as to, in Petition—Notice served upon Occupier—Alternative Scheme set up in Petition, Practice as to.

The corporation of Southampton sought to extend an existing cemetery by taking a

portion of common land adjoining it. The bill was opposed by the owner of an adjacent estate, which was laid out for building, and would, as he alleged, be seriously depreciated in value by the proposed extension. He also alleged that there were alternative sites further from the town which would be equally suitable for burial purposes, and might be used without public or private nuisance. A dwelling-house belonging to the petitioner was within 300 yards of the proposed extension, and the occupier had received notice under S. O. 15, but these facts were not mentioned in the petition. It appeared, however, that, by an agreement dated September, 1882, a builder had covenanted with the petitioner to complete dwelling-houses within this limit; and, further, that buildings were being erected by the petitioner in immediate proximity to the existing cemetery:

Held, that, no injury to a dwelling-house within the 300 yards' limit being alleged, the petitioner could not bring forward this matter in argument; and that his claim to be heard upon the statements in his petition could not be sustained.

The *locus standi* of the petitioner was objected to, because (1 and 2) no land, building, property, rights, or interests of his will be taken or interfered with; (3) he cannot be injuriously affected in such a way as to entitle him to be heard; (4) the bill contains the usual clauses for compensation to persons whose lands may be injuriously affected; if, therefore, the petitioner is injuriously affected, which the promoters deny, the usual remedy is provided by the bill; (5) the petitioner alleges no ground entitling him to be heard according to precedent and practice.

Pembroke Stephens, Q.C. (for petitioner): The bill, which proposes to add twelve acres to the existing cemetery at Southampton, is one of a class for which Parliament has specially provided S. O. 5 and 15, showing that cemeteries may give rise to special nuisance and inconvenience. This cemetery was authorised in 1843 on some waste or common ground well away from what was then the town of Southampton, but even then the Act provided "that no part of such cemetery shall be within 300 yards of any house, now standing, of the annual value of £50."

Since then the town has increased in the direction of the Itchin and the directions. The enlargement of the valuable building lying immediately site, a considerable within 300 yards cemetery.

The CHAIRMAN: of the existing cemetery Hulse's land than t
Stephens: Yes;
Mr. CHANDOS L. E. allege that there standing within extension.

Stephens: Within a dwelling-house, t by an under-tenant
Michael, Q.C. (for such allegation in t gone into.

Stephens: The notice on the occup
The CHAIRMAN: The petitioner must ments in his petition case of a dwelling-h one of the owner's property.

Stephens: If the mitted, the value of be seriously depreci if any additional la should be taken at a town, on sites sugg would be less object less injurious to tioner's land has be poses, and building erection, though not Arrangements, how builders to erect h this limit. [Coven

The CHAIRMAN: T by his covenant, w tended or not?

Stephens: Yes; c tioned, but not on of the covenant is S there was any que houses are to be fu For legal purposes, t The effect of the cemetery would be ings being put up which is most suitab

IRMAN: The petitioner cannot get fact—that he is building up to the netery.

NDOS LEIGH: By the Southampton Act, 1865, which provided that the land could be kept as an open space for the wants of Southampton, it seems to be contemplated that some of the committee might have to be taken for enlarging the area?

: We want to show before the Committee, with advantage to the public, the right might be extended on land in another

IRMAN-CARTER: The petitioner sets up a scheme, but you know how that was received by a Committee?

: If you set up an alternative scheme, giving such particulars as will enable the members on the other side to ascertain if there is a feasible scheme, some Committee would say that in that case an alternative might be admitted, though I do not say the practice is uniform.

was not called on to reply.

IRMAN: We cannot allow a *locus standi* in this case.

Locus Standi Disallowed.

for Petitioner, *Martin & Leslie.*

for Bill, *Simson, Wakeford, Goodhart &*

STOCKTON LOCAL BOARD BILL.

of THE CORPORATION OF STOCKTON.

1884.—(Before Mr. PEMBERTON, M.P., Mr. HINDE-PALMER, M.P.; Mr. MELDON, M.P.; and Hon. NDOS LEIGH, Q.C.)

—Confirmation by Bill promoted by Parties to Alleged Submission to Arbitration—Re-opening of Decision by Bill—Right Parties to Agreement to be before Committee—Practice.

confirmed an agreement entered into in 1876, to which the promoters and petitioners were parties. The agreement related to the purchase by the promoters (local board), of a share in a water-undertaking, transferred by an Act of 1876 to the corporations of Stockton and Middlesbrough, the sum to be paid by the local board for their share in the

undertaking having been at the time left in blank. The settlement of the amount to be paid by the local board had subsequently been referred to an independent party, and the bill provided for payment by the local board of the sum fixed by the referee. That sum was considered by the petitioners to be inadequate, but the promoters maintained that it had been determined by an arbitrator appointed with the consent of both parties, and that the petitioners ought not to be heard to reopen the question settled by him. The petitioners contended that there had been no formal submission to arbitration, but only a friendly reference, and that in any event they were entitled to go before the Committee, on a bill for confirming an agreement to which they were parties:

Held, that the petitioners were entitled to a general *locus standi* in accordance with the practice of the Court in reference to bills confirming agreements.

The *locus standi* of the petitioners was objected to, because (1) the bill is one promoted in pursuance of and for giving effect to an agreement entered into by the corporation of Stockton and the corporation of Middlesbrough with the local board, in the year 1876, during the passage through Parliament of the bill then being promoted by the two corporations for acquiring the undertaking of the Stockton and Middlesbrough waterworks company, whereby it was agreed that the said undertaking should be vested in the two corporations and the local board jointly in certain prescribed shares, and that the local board might introduce into Parliament in the then next or any subsequent session, and the two corporations should use their best endeavours to aid the local board to procure to be passed into law, a bill containing all necessary powers and provisions for carrying out the arrangements contained in that agreement, and the corporation of Stockton are therefore precluded from being heard against the bill; (2) the corporation of Stockton having agreed with the local board since the introduction of the bill into Parliament to refer the question of the price to be paid by the local board for their share in the undertaking to arbitration, and having by divers other acts and proceedings admitted and assented to the principle of the bill, are not

entitled to call in question the interpretation put upon the agreement by the local board, or to dispute the expediency of carrying the agreement into effect in the manner proposed by the bill; (3) the local board deny that the arbitrator has exceeded the authority relegated to him as stated in the seventh paragraph of the petition, and the petition does not show by reference to the terms of submission to arbitration, or otherwise, that he has so exceeded his authority. It is not competent for the corporation of Stockton to question the amount, or otherwise dispute the validity of the award before the Select Committee on the bill; (4) the petition discloses no injury to the corporation, or to the inhabitants of Stockton which entitles the corporation to be heard against the bill; (5) if the corporation of Stockton are entitled to be heard at all upon their petition against the bill (which the promoters do not admit) they can only be heard against clause 3 of the bill.

O'Hara (for petitioners): In 1876 there was a contest which ended in the passing of an Act of Parliament called the Stockton and Middlesbrough Corporations Act, 1876, under which the corporations of Stockton and Middlesbrough undertook jointly to purchase the water undertaking of the Stockton waterworks company. At the time that bill was pending in Parliament a petition was presented against the bill by the South Stockton local board, and during the pendency of that bill, an agreement was come to which was dated the 21st day of March, 1876, between the mayor, aldermen and burgesses of the borough of Stockton, the mayor, aldermen and burgesses of the borough of Middlesbrough, and the local board of South Stockton; by which agreement the corporations agreed that in the event of the local board of South Stockton paying a certain sum of money to be afterwards ascertained, they should be entitled to one-twelfth of the water undertaking which the corporations were about to purchase, and the local board of South Stockton were to participate in the ownership of the Stockton water company's undertaking transferred to the two corporations in pursuance of the Act of 1876. The local board of South Stockton now, in the exercise of the right reserved to them in that agreement of 1876, are promoting a bill in Parliament, which is before you and which is intituled "An Act for empowering the South Stockton Local Board to acquire a share in the waterworks undertaking of the Stockton and Middlesbrough Water Board, and for other purposes." The bill enacts that "The local board shall pay to the corporation of Stockton as the consideration for the acquisition by the

local board from the corporation of Stockton of such interest in the waterworks undertaking as hereinafter mentioned, £76,447 14s. 8d." We petition against this bill and we say that the bill does not give effect to the agreement, because the price mentioned in the bill is less than the amount to which we are entitled in respect of the one-twelfth of the water undertaking, and we say you are settling the question of price by putting in £76,447 14s. 8d.

The CHAIRMAN: Does the bill purport to carry the agreement into effect?

O'Hara: Yes; the *raison d'être* of the bill is to give effect to the agreement.

Mr. CHANDOS LEIGH: And the sum named is the consideration for the twelfth?

O'Hara: Yes; there was a friendly reference to a referee, a gentleman of the name of Peat, not a submission to arbitration, but a friendly reference to ascertain the value of this twelfth.

G. A. R. FitzGerald (for promoters): In our opinion it was a submission to arbitration.

O'Hara: That is a point that will be raised when the case comes to be inquired into before the Committee.

The CHAIRMAN: In an ordinary case, where a bill is brought in to carry into effect a contract, both parties to the contract must be before the Committee to see that it is carried out.

FitzGerald: Certainly; I admit that is so in an ordinary case.

The CHAIRMAN: Even assuming there was no dispute as to the way in which it was to be carried out, surely the corporation of Stockton, one of the parties to the contract, are entitled to be there to see that it is properly carried out.

FitzGerald: I think if the circumstances which have led to the introduction of this bill are stated, the Court will find that, in the events which have taken place, the corporation are precluded from appearing to object to the figure stated in sec. 4 of the bill.

The CHAIRMAN: Have they precluded themselves by the agreement from appearing?

FitzGerald: The resolution of the Parliamentary Committee of the corporation of Stockton is this:—"That the council be recommended to invite the South Stockton local board to jointly appoint Mr. William Barclay Peat to investigate the accounts of the water board, and decide as between the corporation and the local board the amount to be inserted in their bill for acquiring a twelfth share in the waterworks undertaking." They having submitted that question to the arbitration of Mr. Peat, and Mr. Peat having given his award, and the sum having been fixed by Mr. Peat and

inserted in the bill, we contend that, in the face of that and the agreement of 1876, which bound the corporation of Stockton to the award, when the South Stockton local board are promoting a bill to carry the agreement into effect, the corporation of Stockton cannot be heard.

Mr. CHANDOS LEIGH: Was there any submission to arbitration?

O'Hara: There was an invitation that this gentleman should act in a friendly way.

Mr. CHANDOS LEIGH: Was the matter wholly referred to him, and was his decision to be final?

O'Hara: No.

The CHAIRMAN: Even assuming the figure to be agreed on, the parties to the original agreement are entitled to be before the Committee to see the agreement carried out.

O'Hara: It is common sense. Suppose we were not before the Committee and they thought fit to alter the figure, we should have no remedy. Where there are two parties to an agreement, it is absurd to say that one of them is not to be present to see it carried into effect.

The CHAIRMAN: It does not follow that the corporation of Stockton, if they are allowed a *locus standi*, mean to oppose the principle of the bill; but surely in any process that is necessary to carry out a contract between three people all three are entitled to be present.

FitzGerald: Of course I should assent to that general proposition; but the case before you is not that case at all. The case is this:—In 1876 there is an agreement that in consideration of the local board of South Stockton withdrawing their opposition to the bill then pending in Parliament, the corporation should use their best endeavours to aid the local board to pass into law a bill for carrying out the arrangement of admitting the local board to a share in the undertaking.

The CHAIRMAN: Mr. O'Hara would say that he ought to be there to see it all properly done; he is going to help you when he gets there.

FitzGerald: The circumstances are quite different from the circumstances in an ordinary case, such as that which the Chairman has in his mind. A great deal has happened since that agreement. The local board have resolved to exercise the power reserved to them of coming in for their share in the undertaking. The corporation of Stockton invited them, by a resolution, to appoint Mr. Peat to decide all matters, to investigate the accounts of the water board, and decide as between the corporation and the local board as to the amount to be inserted in their bill for acquiring a twelfth share in the undertaking. The local

board passed a resolution assenting to that, and in those two resolutions you have a complete and effectual submission to arbitration of the amount to be inserted in the bill.

The CHAIRMAN: We will put it as much in your favour upon that point as you like. Supposing there had been no dispute at all as to the amount, it seems to me as a matter of first principle, where there are two parties to a contract, and it is necessary to come to Parliament in order to carry it out, that the two parties should be present.

FitzGerald: Are they entitled to go behind the arbitration, the result of their own invitation, and because they are dissatisfied with the finding of the arbitrator, re-open the whole thing before the Committee?

The CHAIRMAN: Apart from their quarrelling with the decision of the arbitrator, it seems to me that they have a right to be before the Committee to see that the agreement, which you say it is necessary to come to Parliament to carry out, is properly carried out. When you are before the Committee it will be competent for you to say they are bound by the decision of the arbitrator; but they have a right to see that the contract is properly carried out.

FitzGerald: Their only allegation is that the amount is unjust and inequitable, and ought not to receive the sanction of Parliament. That is not a ground that entitles them to be heard. They "submit that the allowance by the said William Barclay Peat in favour of the promoters, of eleven-twelfths of the amount received by the joint board from the district of South Stockton, in pursuance of the provisions of sec. 92 of the Act of 1876, is inequitable and unjust as regards your petitioners, and ought not to receive the sanction of Parliament. That such allowance as aforesaid by the said William Barclay Peat is in excess of the authority relegated to him by your petitioners and the promoters."

Mr. CHANDOS LEIGH: That is all matter for the Committee.

O'Hara: We go on to say, "Your petitioners further submit and contend that even if the award be upheld in this respect provision should in any event be made by the bill for recouping your petitioners six of the said eleven-twelfths, either by the imposition upon the corporation of Middlesbrough of a direct liability to that extent, or by imposing upon the promoters a contingent liability to return to your petitioners so much of the purchase-money as will represent the amount of such six-twelfths in the event of the same not being paid to your petitioners by the corporation of Middles-

brough." In fact, we want to have the whole agreement carried out in its entirety, and if this bill goes before the Committee without our being there, a directly contrary effect may be given to the agreement to that which we say ought to be given to it.

FitzGerald: To allow the corporation of Stockton to go before the Committee will be re-opening the arbitration.

The CHAIRMAN: You have an agreement between three parties in the first instance which is partly carried out by arbitration, but it is necessary to come to Parliament fully to carry it out. Surely the parties to the original agreement and to the reference to arbitration are entitled to be there?

FitzGerald: It is not partly, but wholly carried out, because the sole matter referred was the sum to be inserted in the bill. Mr. Peat has found the sum that ought to be inserted in the bill. In any event it is only a question of clause; they are only entitled to a *locus* against clause 3.

The CHAIRMAN (to Mr. O'Hara): Will that satisfy you?

O'Hara: No; the bill is to carry into effect this agreement, and there are other matters in the bill on which we claim to be heard. The interests of the local board of South Stockton are sought to be protected in this bill, and we claim the right to be present when this agreement is brought under the notice of the Parliamentary Committee when it will be made binding on us for ever. The interpretation which will be put upon it by the Committee will bind us and our successors for ever.

Mr. HINDE-PALMER: What is proposed by the promoters would appear to be like filing a bill in the Court of Chancery for specific performance of an agreement and leaving out some of the principal parties to the transaction.

O'Hara: That is it exactly.

FitzGerald: Surely, that is not quite so. The sum to be paid by the local board to the corporation of Stockton has been found by the proper tribunal, the only tribunal capable of going into this question of figures, on the invitation of the corporation themselves. If, after taking all things into consideration, that is to say, the agreement of 1876, the arbitration on the invitation of the corporation themselves, and the amount found by the arbitrator and inserted by the local board in their bill in compliance with the arbitrator's award, the Court should be of opinion that the corporation should be heard before the Committee, I submit that they should only be heard against clause 3; in fact, the allegations of their petition do not go beyond that. "The provisions of the bill

(clause 3) relating to the application by your petitioners of moneys to be received by them from the promoters," we have not the smallest objection to their being heard upon.

O'Hara: Clauses 4, 5, and 6 are clauses regulating the time at which the agreement is to come into effect; they are clauses that we may ask to have modified in accordance with our interpretation of the agreement.

Mr. CHANDOS LEIGH: All those clauses are set out in the petition.

FitzGerald: There is the usual general allegation, but the only substantive allegation is that contained in paragraph 7.

O'Hara: In paragraph 3 we set out clauses 3, 4, 5, and 6; and then we say in paragraph 5, "Your petitioners do not admit the interpretation put upon the above-mentioned agreement of the 21st day of March, 1876, by the promoters, and deny the alleged expediency of carrying the agreement into effect in the manner proposed by the bill."

The CHAIRMAN: We think the facts in this case disclose a sufficient ground for a general *locus standi*; and the petition contains a sufficient allegation to entitle the petitioners to it.

Agents for Petitioners, *Wyatt, Hoskins & Hooker*.

Agents for Bill, *Durnford & Co*.

STOCKTON AND MIDDLESBROUGH CORPORATION WATER BILL.

Petition of (1) CORPORATION OF DARLINGTON; and
(2) BOARD OF CONSERVATORS OF THE RIVER
TEES SALMON FISHERY DISTRICT.

20th June, 1884.—(Before Mr. PEMBERTON, M.P.,
Chairman; Mr. PARKER, M.P.; and Hon. E.
CHANDOS LEIGH, Q.C.)

*Practice—Discussion of Clauses in First House,
how far an Estoppel to locus standi against
Bill in Second House—Clauses Agreed to by
Petitioners under Misapprehension—Alter-
native Scheme suggested in Petition.*

The bill authorised the promoters (clause 19) to take a larger quantity of water from the river Tees than they were at present empowered to take. The petitioners (1 and 2) were both interested in the maintenance of the present quantity and purity of water in the Tees and objected to this power. petitioners (2) further objecting to a penalty

clause (26) in the bill. The promoters objected that the petitioners had raised these questions in the discussion upon clauses before the Committee on the bill in the House of Lords, and that the clauses relating to them had thus become agreed clauses, upon which the petitioners could not be heard in the second House according to the practice of Parliament. It appeared, however, that there had been some misapprehension as to the clauses in question before the Committee of the House of Lords, and that the Chairman of that Committee had drawn up a *memorandum* to the effect that certain points arising on clauses "would seem to stand over for consideration in the House of Commons:"

It was held, that in view of the misapprehension disclosed by these facts, the petitioners ought to be heard against the clauses specially pointed out in their petition, without, however, being heard against any part of the preamble.

Per Cur.) The mere proposal of an alternative scheme in a petition against a bill, without the promotion of a bill for the purpose, does not constitute a competing scheme for purposes of *locus standi*.

The *locus standi* of (1) the corporation of Darlington was objected to, because (1) no rights of theirs are proposed to be interfered with under the bill; (2) they petitioned the House of Lords against the preamble of the bill, and were fully heard by their counsel and witnesses before the Select Committee of that House, to which the bill was referred; (3) the preamble of the bill was declared to be proved by the Committee, but, as a result of the opposition of the petitioners and others, the Committee refused to give the joint board more than ten years further time for completing the whole of their works, and limited the quantity of water to be taken weekly from the River Tees; (4) after that decision the petitioners took part in the settlement of clauses; they were heard by their counsel in support of an amendment in clause 19 of the bill: the said clause was amended by the Committee, and the petitioners expressed themselves satisfied with a clause as so amended; (5) the petitioners were heard by their counsel upon two new clauses (clauses 20 and 21), which were added

to the bill by the Committee, for the protection of the petitioners and others. The said clauses were settled by and between the promoters of the bill and the petitioners and other petitioners, and are in the nature of agreed clauses, and the petitioners expressed themselves satisfied with the said clauses as so settled and as passed by the Committee; (6) the petitioners urge that the joint board should be prohibited under heavy penalties from discharging any deposit from their tanks and filter beds, or dirty or sludge water or other offensive matter into the river Tees, but the joint board are not prohibited, under their present Act, from so discharging, and no powers are sought in the bill relating to such discharge. The allegations contained in paragraph 14 of the petition have reference to the discharge by the joint board under their existing powers, and, in effect, complain of past legislation; (7) for the foregoing and other reasons, the petitioners are not entitled to be heard either upon the preamble or clauses of the bill; (8) even assuming that the petitioners are entitled to be heard at all, they are only entitled to a limited *locus* to be heard in support of such amendments to clauses or new clauses as were proposed by the petitioners in the other House of Parliament, and were not sanctioned by the Committee; (9) the petition does not disclose any grounds of objection to the bill upon which the petitioners can now be heard according to practice.

The *locus standi* of (2) the Board of Conservators of the River Tees Salmon Fishery District was objected to, because (1) the petitioners are not entitled to be heard under S. O. 134a, inasmuch as the bill does not relate to the lighting or water supply of Darlington or to the raising of capital for any such purpose within the meaning of the said S. O.; (7) even assuming that the petitioners are entitled to be heard at all, they are only entitled to a limited *locus* to be heard in support of such amendments to clauses or new clauses as were proposed by the petitioners in the other House of Parliament, and were not sanctioned by the Committee; (8) the petition discloses no ground for a hearing according to practice.

Pope, Q.C. (for petitioners (1)): The purpose of this bill is to extend the time for the construction of certain works authorised at the time of the purchase of the water undertaking by the corporations of Stockton and Middlesbrough, and in the meantime, clause 19, to authorise them to pump from the Tees a larger quantity of water than they are at present authorised to do. Their limit at present is 60,000,000 gallons a week. By sec. 19 the House of Lords has authorised them in quinquennial

periods to increase that amount up to a certain amount there mentioned. The corporation of Darlington are the water authority supplying water to the inhabitants of Darlington itself, the Stockton and Middlesbrough corporations having no water authority within the limit of Darlington. The Darlington source of supply is the Tees; their intake being below the point of the intake of the Stockton and Middlesbrough corporations, so that every extra quantity that the Stockton and Middlesbrough corporations pump out of the Tees diminishes the source from which Darlington draws its supply.

The CHAIRMAN: Are the corporation of Darlington the water suppliers?

Pope: Yes; they are the water authority for the borough of Darlington. When we were before the House of Lords there could not be a question as to our *locus standi*, because we were interested in the Tees, both as regards the quantity and the purity of its water, and in every matter affected by the power which was then sought to pump from the river a very much larger quantity than the House of Lords gave them authority to take. The notice of objections does not attempt to say that, as a matter of principle, we are not entitled to be heard; but, practically, what it does say is this: "When you were in the House of Lords, you interfered in the discussion of clauses, and, therefore, cannot be heard before the Committee of the second House." They say: "After that decision the petitioners took part in the settlement of clauses. They asked for and obtained the insertion of a clause for their protection (clause 16)." It was not inserted as we asked for it, and, therefore, we are entitled to re-discuss it. "And were heard by their counsel in support of various amendments to the clauses of the bill (more especially clause 19)." That is the clause of the bill which authorises the extra pumping, which is the *gravamen* of the whole bill.

Mr. CHANDOS LEIGH: You say clause 19 is, in fact, the whole bill?

Pope: Yes.

The CHAIRMAN: The practice is the same in one House as in the other, is it not, with regard to parties being precluded from being heard in the second House if they have discussed clauses in the first?

O'Hara (for promoters): I have a case to refer you to which settles the point: *Local Government Board Provisional Order Confirmation (Lower Thames Valley) Bill, 1877* (2 Clifford & Rickards, 27).

Mr. CHANDOS LEIGH: If opposing parties appear on clauses in one House, they are not entitled to be heard on preamble in the next.

The CHAIRMAN: And that is the case with regard to either House?

O'Hara: Yes.

Mr. CHANDOS LEIGH: With this exception, that if the Committee of one House choose to put upon the opponents a clause, even if the opponents were in the room, they would get a *locus standi* against the preamble in the other House.

O'Hara: The state of things here is this: The preamble was decided against the petitioners who, after that decision, discussed clauses and proposed amendments to some of our clauses, entering into what we thought was a final adjudication of the question.

Mr. CHANDOS LEIGH: Assuming that the petitioners were not satisfied with the adjudication, you contend that they could not be heard in this House against those clauses?

O'Hara: Yes.

Pope: It may very well be said that, as regards part of the preamble which we do not care to dispute, we may have been taken to have assented to the principle of the bill, and I do not intend to raise any question with regard to that part of the preamble, but we did discuss a part of the preamble which deals with the quantity of water to be taken from the Tees, the clause to which that part of the preamble relates being clause 19. We are dissatisfied with the decision of the Committee of the House of Lords upon that question.

Mr. CHANDOS LEIGH: Supposing you were allowed a *locus standi* upon clauses, what would be the clause you would ask to have a *locus standi* upon?

Pope: Against clause 19, and then we should ask for a *locus standi* against sub-sec. 4 of clause 5, which authorises the construction of an aqueduct, conduit, or line of pipes, which will pass through Darlington. When we asked for a protective clause in respect of that power given by sub-sec. 4 of clause 5, to lay a conduit or pipe through our borough, we were met by the objection that that had been settled upon preamble, and we were not allowed to propose that clause. A *locus standi* against clause 19 and sub-sec. 4 of clause 5 would cover all the matters in the bill that we are interested in, and then, I take it, you would say, "And so much of the preamble as relates thereto."

Mr. CHANDOS LEIGH: Assume that this Court did not give you a *locus standi* with the words "And so much of the preamble as relates thereto," and supposing when you got before the Committee, the Committee were to say, "We think it would be a good thing to discuss this upon preamble;" it could be done I take it?

do not think it could.

DOS LEIGH: You would have to wait until the matter was proved?

Yes; and then we should be met by the objection that we were met with in sub-sec. 4: This is re-opening the question which you have already settled. It is, when the bill was reprinted, they found that a clause which they had when they were before the Committee would not secure a certain result, would not secure it. In the meantime the bill was in the House, and, thereupon, the House was communicated with to know what the opinion of the Committee was, and the House drew up a memorandum for the Committee.

The petitioners (2): The petitioners are the fishery board, and the same body are the conservators of the river. I pray the House to consider the arguments just addressed to the House, in a very great measure, the case of the fishery board is similar to the case of the Corporation of Darlington.

DOS LEIGH: I see you are bracketed the Corporation of Darlington in the 21st clause, persons interested in the river

Yes. We are interested in the flow of the river being maintained, and we are also in the purity of the river being preserved. Clause 26 of the bill does not give us what we sought to obtain. Though by clause 24 we have a joint power with the Corporation of Darlington of seeing that a stream is kept and maintained below the level of the river as to ensure that a proper quantity of water is discharged into the river, we have by clause 26, a joint power with the Corporation of Darlington of enforcing a penalty in the event of the fishery board failing to allow the proper quantity of water to flow over the weir. The clause asked to be included with the Corporation of Darlington in clause 26, and that was refused to us; and we were also refused this objection. It came out in the evidence of the Committee of the House of Lords that the fishery board were in the habit of discharging a quantity of refuse water from the river, which, it was proved, was injurious to the river. We called evidence on the matter to prove that this dirty water was discharged into the Tees five days a week, and that it could be traced a distance of 15 miles, and the fishery board asked that a provision be inserted preventing the water board from discharging comparatively pure water from the river while discharging their dirty refuse water into the river. We failed to get that redress,

for though we raised the point in our petition, the Committee said that we had not given evidence to show that the water board would be able to do what we asked for without disturbing their operations, and they could not add a clause like that to the bill without knowing what the effect would be upon the works of the water board. Then with regard to the 19th clause there was a considerable misunderstanding at the time it was discussed; we understood it one way, the promoters understood it another way, and though we accepted it, we subsequently ascertained that we had accepted one thing believing that we were accepting another. To show that we were *bonâ fide* in the matter, we entered upon a correspondence with the agents of the promoters, and in the result there was an *ex parte* application by the agents for the promoters to the Chairman of the Committee, who drew up a memorandum of what was really the decision of the Committee.

The CHAIRMAN: Suppose there has been a mistake, are the Court to set it right by giving you a *locus standi* to go before the Committee of the House of Commons? Ought you not to have applied to the House of Lords to set it right?

Luck: We only accepted the decision of the Committee on clauses under a misapprehension. There was no agreement. In the case referred to by Mr. O'Hara there was substantial agreement between the parties. On behalf of the fishery board I sat still and was silent, and I assumed that what was being passed was one thing when it turned out to be something else. In the memorandum drawn up by the Chairman of the House of Lords' Committee on the bill, he pointed out that any dispute between the parties might be settled by the Committee of the House of Commons.

The CHAIRMAN: The Chairman in that memorandum says:—"It is possible that these lines in page 16 may, for some reason not argued before the Committee, be inconsistent with some other part of the bill or that the state of matters assumed as a condition precedent to their coming into force may be either, as above indicated, a physical impossibility or a financial impossibility. These points were not argued before the Lords' Committee and would seem to stand over for consideration in the House of Commons." That does not seem to point to a clause having been settled which had not the effect which everybody supposed it would have, but rather to the fact of the thing not having been discovered at all. There seems to have been a mistake. The only question is whether we can set it right by giving the petitioners a *locus*

standi, and whether you ought not to get the mistake rectified in the House of Lords in some way.

Luck: I have a further point in respect of which I claim a general *locus standi*, and that is, that in my petition I now raise an alternative scheme and suggest that the water board for manufacturing purposes should take water from a point lower down the river than their present intake.

The CHAIRMAN: Have you any bill for that alternative scheme?

Luck: No; it is merely suggested in the petition.

The CHAIRMAN: If you are not entitled to a *locus standi* on other grounds the mere fact that you propose an alternative scheme in your petition will not give you one.

Mr. CHANDOS LEIGH suggested that, as some misunderstanding appeared to have arisen as to what was agreed to before the Committee of the House of Lords, and what was not, both petitioners should have a *locus standi*, not on preamble, but against clause 19 only.

O'Hara accepted this suggestion.

Luck asked that he should have a *locus standi* against clause 26 also.

After some further discussion, it was agreed that Mr. *Luck* should have a *locus standi* against this also.

Luck then stated that the water board at present poured into the river a certain quantity of refuse water from their filter beds, and he submitted that he ought to be allowed to ask the Committee for a protective clause in that respect (which he asked for in the House of Lords, but which was refused), seeing that the effect of the bill would be that the water board having power to take a greater quantity of water out of the river would pour a greater quantity of refuse water from their filter beds into the river.

O'Hara stated that this would be complaining of past legislation, and there was nothing in the bill to enable the water board to put any additional refuse into the river.

The CHAIRMAN stated that the *locus standi* of Mr. *Luck*'s clients must be confined to clauses 19 and 26.

Locus standi of the Corporation of Darlington Allowed against clause 19.

Locus standi of the Conservators of the River Tees Salmon Fishery District Allowed against clauses 19 and 26.

Agents for Petitioners (1) and (2), *Durnford & Co.*

Agents for Bill, *Wyatt, Hoskins & Hunter.*

STOCKTON C.

Petition of MESSRS
WILLIAM WHITE
DUCK, AND Co.;

14th March, 1884

M.P., Chairman
JOHN DUCKWORTH
LEIGH, Q.C.)

Railway—Obstruction
causes—Traders—
Inconvenience to
—Injury by Noise
Clauses Act, 1861

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Act, 1863, with respect to the crossing of roads and other interference therewith are incorporated with the bill, and provide all necessary safeguards for protecting the public from danger at the level crossings, and for preventing the public traffic over the roads being obstructed during the construction of the works and during the working of the railway; (4) the petitioners have no special right or interest in the roads proposed to be interfered with apart from the general public, and they will be affected in the same way only as the rest of the public; (5) the access to the petitioners' (Head, Wrightson and Co.'s) works, will not (as alleged in paragraph 13 of the petition) be obstructed by the execution of the proposed works, and the allegations therein contained of the injury to be done to their business offices by noise, steam, smoke and vibration from close proximity to the proposed railway (these petitioners being engineers and iron founders and proprietors of iron works and themselves possessed of similar level crossings in the public streets) are very much exaggerated, but even if they were accurate, would not entitle the petitioners to be heard against the bill; (6) the allegations with respect to the injurious affecting of the petitioners' property do not constitute a ground of *locus standi*; (7) the petition contains mere general allegations of obstruction to the approaches and access of the petitioners' premises, and of depreciation of their property and of loss which they may sustain from the execution of the powers in the bill, which are for the most part imaginary, but do not disclose any specific or substantial grounds of injury to the petitioners or their property so as to entitle them to be heard against the Bill.

O'Hara (for petitioners): I will confine myself to the case of Messrs. Head, Wrightson and Co. The petition alleges that "Your petitioners, Head, Wrightson and Co. engineers, iron founders, iron roofing and bridge builders, are owners and occupiers of the Teesdale Iron Works, at South Stockton, in the North Riding of the County of York, and give employment to from 750 to 850 hands, nearly all of whom are resident in and about the town of South Stockton." Then it describes the railway and alleges that: "By clause 7 of the bill, it is proposed to enact that the promoters may, in the construction of the works, carry the same with a single line only, while the railway shall consist of a single line, and afterwards with a double line, across and on a level with the roads numbered respectively 4 and 23 on the deposited plans. The roads so referred to by the numbers 4 and 23 are two of the principal

thoroughfares in South Stockton, that numbered 4 being called "Railway-street," while road No. 23 is called "Trafalgar-street," over which, in addition to most important traffic, the workmen employed by your petitioners have to pass and repass to and from their work many times in the course of the day. There is also a very considerable traffic through Trafalgar-street to and from a public ferry over the river Tees leading from South Stockton to North Stockton. In addition to the crossing on the level of the two roads, Railway-street and Trafalgar-street, three other roads will be either crossed or partially crossed on the level by the railway, namely, Albert-street, Hanover-street, and Nile-street. All of these are important public thoroughfares, along which great numbers of the public have necessarily to pass and repass daily. The crossing on the level of such important public roads in the manner proposed to be authorised by the bill would subject your petitioners and the large number of persons in their employ to very great danger and inconvenience, and will materially affect and depreciate the value of the property of your petitioners, and will incommode them in the proper carrying on of their business, and this danger and inconvenience will be much increased when the line shall have been doubled, as provided by the bill; and the execution of the proposed works will obstruct to a very serious degree, if not entirely destroy, the principal approaches and access to their works and property, and their business offices will also be injuriously affected by noise, steam, smoke and vibration in consequence of the close proximity to the railway. The number of workmen and others passing to and from your petitioners' works and to and from the said ferry was counted on the 13th day of February, 1884, when it was found that, between the hours of 5 o'clock a.m. and 9 o'clock p.m., there passed 12,564 men, women, and children (in addition to 309 conveyances), who, if the proposed railway were constructed, would have to go over one or other of the proposed level crossings, a number of persons in excess of the whole population of South Stockton.

Mr. CHANDOS LEIGH: Do not the local board of South Stockton petition?

Ledgard, Q.C. (for promoters): No, they approve of the bill.

O'Hara: They approve of it by a majority of one.

Mr. John Baker (called and examined by *O'Hara*): The way in which Messrs. Head and Wrightson are affected, is that it would entirely depend upon the position in which the gates are placed, whether they would hereafter

have access to their own premises or not. The limits of deviation extend from this point to a point somewhere here (*pointing to the plan*), and there is nothing at all so far as we know to define where the gates should be put; therefore the extent to which Messrs. Head and Wrightson are affected depends upon something of which we know nothing. The gates might be so placed as to cut off the access to Messrs. Head and Wrightson's works.

The CHAIRMAN: As to the general nuisance of a level crossing I suppose that is a matter for the local authority. The petitioners' case is that it actually stops up the access to their premises?

O'Hara: Yes, it is a case in which the public have an interest, but in which they in their individual capacity have a much greater interest than any member of the public.

The CHAIRMAN: You say it will interfere with their trade and stop their access?

O'Hara: Yes.

The CHAIRMAN: The strongest case that I remember was Maltby's case, where the road to a public-house was entirely blocked up. (*Midland Railway Bill, 1880, 2 Clifford & Rickards, 298*).

O'Hara: I refer you to the *Lancashire and Yorkshire Railway Bill, 1883* (3 Clifford & Rickards, 294). As regards practical injury there is no difference between that case and this.

Mr. PARKER: You do not say the work-people will have to go round—you say there will be danger in the level crossing.

O'Hara: They will have to stop outside the level crossing, and they will lose their time as much as if they had to go round a greater distance.

Mr. CHANDOS LEIGH: You have not said anything upon the allegation at the end of paragraph 13 of the petition, as to the question of smoke, vibration and interference with business premises.

O'Hara: I attach great importance to that.

Mr. CHANDOS LEIGH: In the case of the *South-Eastern Railway Bill, 1876* (1 Clifford & Rickards, 258), where an embankment or wall was put up within 2 feet of business premises which were outside the limits of deviation, it was held to be such an obstruction to the business of the petitioners as to give them a *locus standi*.

O'Hara: I refer the Court to two similar cases, the *Southport, &c., Railway Bill, 1882* (3 Clifford & Rickards, 226), and the *Hoyle and Birkenhead Rail and Tramway Bill, 1881* (Ib. 65.)

Ledgard (in reply): Not one of the cases

cited has a single feature in common with this. In the *South-Eastern Railway* case a high embankment absolutely cut off the light necessary to the conduct of the business. The question is a question of degree in each particular case. In all cases, where a *locus standi* has been given on the ground of obstruction of access, the street interfered with formed an important access, which was either going to be stopped up altogether, or a substituted access was given, which was so circuitous that it caused a very serious obstruction. The *Lancashire and Yorkshire Railway* case last year was a much stronger case of obstruction than this. With reference to the position of the gates, we cannot shift our centre line about so as to put the gates in such a position as to cut off the access. This is a little line 250 yards in length, which is intended to give access to a large area of land upon which works are being built on the west of Stockton; it is nothing but a single line from the North-Eastern, not causing half the obstruction of the existing sidings into the works.

The CHAIRMAN: The obstruction would be only during the passing of the trains.

Ledgard: Yes. The Board of Trade would lay down restrictions as to speed, and we are under the provisions of the Railways Clauses Act, 1863, which is incorporated with the bill. There is no stopping up of the access. Here you have ironworks belching forth volumes of smoke, and a large shipbuilding yard. Another level crossing such as that proposed cannot be such a serious obstruction as to entitle the petitioners to be heard.

The CHAIRMAN: The question is whether the proposed works would create such an obstruction to the access to the petitioners' works as would seriously affect them.

O'Hara: I submit that I have shown that.

The CHAIRMAN: For instance there might be such gates put across Trafalgar-street as would block the entrance to this property from Trafalgar-street, at all events while the gate was shut.

Ledgard: The trains would be very few, and, though they would necessarily go at very slow speed, the detention would be very slight. You cannot compare this level crossing with many existing ones. It would not prevent carts coming in and out of the premises of the petitioners just the same as before.

The CHAIRMAN: Altogether we are of opinion that there is not sufficient obstruction here to give a *locus standi*.

Locus standi of Petitioners Disallowed.

Agents for Petitioners, Wyatt, Hoskins & Hooker.

Agents for Bill, Durnford & Co.

Y, STRATHDON AND DEE- UNCTION RAILWAY BILL.

he HIGHLAND RAILWAY COMPANY.

1884.—(Before Mr. PEMBERTON,
man; Mr. HINDE-PALMER, M.P.;
t, M.P.; Sir JOHN DUCKWORTH;
HANDOS LEIGH, Q.C.; and Mr.
STER.)

*petition—Line nominally pro-
dependent Company for Local
ctions and Working Agreement
ing Company—Promotion of Bill
g Company in same Session for
continuation of proposed Line—
interested in existing Through*

*et will look at the Probable Con-
arising from construction of
stimating Competition.*

construction of a short line of rail-
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e Great North of Scotland com-
orised the promoters, a nominally
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ts with the Great North of Scotland

The latter company were them-
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used by the bill, and would with
them to work through traffic
Aberdeen and Inverness, the
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r their own railways and partly
of the petitioners, the Highland
company. The petitioners claimed
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; that the railway authorised by
lthough promoted nominally by
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promoted in the interests of the
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ffic. The promoters denied that
North of Scotland company were
in the promotion of the bill, of
evidence had been adduced by
ners or could be found in the

provisions of the bill, beyond the fact that
junctions were formed with that company's
line and power given to enter into working
agreements with them:

Held, that, having regard to the local position
of the proposed railway, to the fact that
the Great North of Scotland company were
themselves promoting in Parliament a rail-
way which would form a continuation of
that proposed by the bill, and to the
general circumstances indicating the effect
of the proposed railway upon through
traffic, the petitioners were entitled to be
heard generally against the bill on the
ground of competition.

(*Per Cur.*) In every case of competition the
Court must look at what the probable conse-
quences of the proposed railway may be.

The *locus standi* of the petitioners was ob-
jected to, because (1) they have not and do not
allege any such interest in the subject-matter
of the bill as to entitle them to be heard
according to practice; (2) no lands of theirs
will be taken or junction formed with their
railway; (3) the bill proposes the construction
of a railway by a new company, and, even if it
were proposed by the Great North of Scotland
railway company, the effect would only be to
unite the two portions of that company's
system and not to interfere with the peti-
tioners, or entitle them to be heard.

Pope, Q.C. (for petitioners): The line in
question is one which is promoted nominally by
an independent company, proposing to connect
the Deeside railway of the Great North of
Scotland company, a little to the east of
Ballater, by a cross country route with Boat of
Garten and Nethy Bridge, being stations of
the Great North of Scotland company as well
as of the Highland company. The line though
nominally independent forms a junction with
the proposed line of the Great North of Scot-
land from Boat of Garten to Inverness, which
is promoted by the Great North of Scotland
company, and is a competitive line with our
proposed Highland line from near Boat of
Garten to Inverness. Of course those two
individual lines will be dealt with as com-
petitive lines, but it is evident from the map
that the intention of the whole scheme, so far as
the Great North of Scotland company is con-
cerned, is to give them an entirely new access
from Aberdeen to Inverness. If this bill were
promoted by the Great North of Scotland com-

pany we should have an undoubted *locus standi* on the ground of competition, but looking at the junctions to be formed with that company's railway, and the power contained in the bill for them to work the line, there is no doubt that competition is at the bottom of the scheme, the obvious object of which is to create a through route in their hands between Aberdeen and Inverness, and we ought to be heard not only against the part avowedly promoted by that company, i.e., between Inverness and Nethy Bridge, but also against this part promoted nominally by an independent company. We get from Aberdeen to Inverness by way of Keith over the Great North of Scotland railway; therefore the present route between those places is composed jointly of the Highland and the Great North of Scotland companies' lines, and we get half the mileage; if this line is passed it would be all Great North of Scotland and we should get none.

Cripps (for promoters): This is a purely local line, and does not touch the Highland railway at any point. The petitioners have given no evidence to the contrary, and we deny that it is connected with the Great North of Scotland company at all, although it may form a connection between two portions of their system for the benefit of residents in the neighbourhood.

The CHAIRMAN: Supposing there was a new line proposed from Aberdeen to Inverness, it would be quite clear, assuming that the Highland company have the control of some part of the traffic from Aberdeen to Inverness at present, that they would be entitled to be heard against that line as diverting some of their existing traffic.

Cripps: I do not allow that, because the Highland railway does not run from Inverness to Aberdeen, but only from Inverness to Keith, which is only half-way towards Aberdeen. The Highland company have no special rights over the Great North of Scotland railway.

The CHAIRMAN: Assuming they have none, at present everybody going from Inverness to Aberdeen must go as far as Keith over the Highland railway?

Cripps: That is so.

The CHAIRMAN: If therefore you came for a new line from Inverness to Aberdeen in your own hands, the Highland company would be entitled to be heard on the ground of competition and abstraction of traffic, according to our practice. How is it a different case because another company makes part of the through railway, i.e., that between Ballater and Nethy Bridge?

Cripps: It is a local line, not even subscribed to by the Great North of Scotland, and no con-

nection with that company has been proved. The question is what is before the Court in this bill. There is nothing in the bill to show that the Great North of Scotland intend to acquire this line.

Mr. CHANDOS LEIGH: Junctions are to be formed, and it is to be worked by them.

The CHAIRMAN: The promoters' present intentions may be innocent, but that will not protect them from the designs of the Great North of Scotland company. We cannot look only at the promoters' intentions, but also at the effect the line may have. We cannot shut our eyes to the fact that it is half a competitive scheme.

Mr. PARKER: The petition states that the proposed railway is unnecessary, and passes through a barren and unpopulous country, and cannot be required for local purposes.

Cripps: That is a question of merits not *locus standi*. The Highland company will be heard against our proposed line from Inverness to Boat of Garten, and can then urge all points as to competition.

The CHAIRMAN: We must in every case look at what the probable consequences of the proposed railway may be. The Committee would certainly go into this question. We cannot, in considering this case, shut our eyes to the fact that, though there is not an existing line from Inverness to Nethy Bridge, there is a project before Parliament now for such a line.

Cripps: If the projected line of the Great North of Scotland between Inverness and Nethy Bridge had been actually made, the Highland company would have had no *locus standi* against the line proposed by this bill, although they would have been heard against the line from Inverness to Nethy Bridge, as having an alternative line of their own between those places, and the only people who would have had a *locus standi* would have been the Great North of Scotland, who have a line from Aberdeen to Nethy Bridge.

Mr. BONHAM-CARTER: Do the Great North of Scotland petition against the bill?

Cripps: Yes, and are still petitioning, having been unable to come to terms.

The CHAIRMAN: We think, under the circumstances, the petitioners are entitled to be heard.

Locus standi of the Highland Railway Company Allowed.

Agents for Petitioners, *Martin & Leslie*.

Agents for Bill, *Dyson & Co.*

WILLOUGHBY RAILWAY
BILL.

ALFORD AND SUTTON TRAMWAYS

184.—(Before Mr. PEMBERTON,
an; Mr. PARKER, M.P.; Sir
BETH; and the Hon. E. CHANDOS

*Competition of, with Railway—
Goods by Tramway, an element in
Through Traffic, Competition
and Tramway seeking Traffic
and Dock.*

right to construct a railway,
from a junction with the Great
(East Lincolnshire) line, to
connection with a dock to be
; and the bill enabled the
to enter into agreements with
company. An authorised steam
narrow gauge ran from a point
station on the Great Northern
a terminus about half a mile
Sutton. The company owning
petitioned on the ground of
, alleging that but for the
railway, they would be able to
run tramway with the dock, and
to the traffic expected there.
expected that there could be no
entitling the petitioners to be
tramway being situated at a
2½ miles from the proposed
along its whole course, except
terminus:

though the case of competition was
being one, the petitioners had a
heard.

of the petitioners was objected
no part of their lands, tramways,
rights will be taken or used, no
run upon their tramways, and
asked for in the bill; (2) no
right, or interest of theirs will
be taken or affected; (3) no competi-
entitling the petitioners to be
proposed railway is intended to
district at present without rail-
ation, the requirements of which

district being in no way met by the petitioners' tramways; and the petitioners will not be deprived of traffic which would otherwise pass over their tramways; (5 and 6) if any competition arises under the bill, which the promoters deny, the bill is merely one to render an existing competition more effectual; (7, 8 and 9) the allegations that the railways are badly devised, and defective in engineering details, and as to the raising of capital, the making of the deposit, and the estimate of expense would not, even if well founded, give the petitioners any *locus standi*; and they show no interest or injury entitling them to be heard.

Pembroke Stephens, Q.C. (for petitioners): We ask to be heard on the ground of competition. The Alford and Sutton tramway is an existing narrow gauge tramway, which starts from the Alford station on the Great Northern (East Lincolnshire) line, and, following the line of the main road, runs through Alford, Bilsby, Markby, and Hannah, to Sutton Staff, a place on the sea coast, about half-a-mile from Sutton, which is a seaside resort for people living in the Midland district. At Alford station, though the tramway is on a different gauge from that of the Great Northern line, it is conveniently placed for the interchange of traffic, and arrangements with that object have been made with the Great Northern company. The proposed railway will start from a point on the Great Northern (East Lincolnshire) line, about two miles south of Alford station, and proceed in a tolerably straight course to Sutton, where, by another bill which has passed unopposed, the North Sea Fisheries (East Lincolnshire Harbour and Dock) company propose to construct a dock. When the dock is completed we should be able to connect our tramway with it, and to carry traffic between that dock and the Great Northern system; but this railway would prevent us from doing so. Under the bill, there would be a virtual amalgamation of the railway and the dock.

Mr. CHANDOS LEIGH: Has your tramway power to carry goods as well as passengers?

Stephens: By sec. 60 of our Act, we may charge tolls for animals or goods. The latest authority on the point is the case of the *Goole, Epworth, &c., Railway Bill*, 1883 (3 Clifford & Rickards, 285). Ours is only a single line, but we can carry whatever the railway would have power to carry, and if they did not come to Sutton, we should have the whole traffic there.

The CHAIRMAN: This railway would not take away any of your local traffic, but only your through traffic?

Stephens: Yes. Possibly people at Hannah might go by the railway; but, if you take

Sutton on the one hand, and Derby, Sheffield, or Nottingham on the other, it is a distinctively competitive route.

Balfour Broune (for promoters) : It has been the general practice of this Court to refuse a *locus standi* to any railway competing with a tramway, or to any tramway competing with a railway ; but the Court have guarded themselves in recent cases where they have allowed a *locus standi* by stating that they said nothing about the general principle, and decided each case on its merits. In the *Goole and Epworth* case the tramway and the railway started from the same point, crossed each other at different points, and practically terminated at the same point.

The CHAIRMAN : The fact that one of the competitors is a tramway and the other a railway imports an additional element into the competition. The point then arises what particular class of goods will be carried by each ; but in all such cases the question upon which the *locus standi* has been decided has been competition.

Broune : Here there is no competition at all. The petitioners may have arrangements with the Great Northern company, but there can be no physical connection with that railway, as they are on different gauges. There is a station yard between the end of their line and the Great Northern railway, and the distance between this point and the station at which we have a physical junction with the Great Northern line is 2½ miles. Our line will be connected with the dock at Sutton, and the object is to carry traffic from that dock to the Great Northern line.

Stephens : There is nothing in the bill relating to the dock, except the power of entering into an agreement with the dock company ; and for purposes of *locus standi* it must be taken to be a railway bill only.

Broune : The railway cannot be looked at without its connection at both ends. We cannot compete with the tramway for local traffic, for we are 2 miles away from it along our whole course, until we approach Sutton.

The CHAIRMAN : The petitioners say that their tramway is calculated to carry goods, and so there will be competition with you for this source of traffic ?

Broune : The tramway will not be able to carry heavy goods.

The CHAIRMAN : We do not think it is a very strong case, but we allow the *locus standi*.

Locus standi Allowed.

Agents for Bill, *Torr & Co.*

Agents for Petitioners, *Atkinson & Dresser.*

TOOTING, BALHAM AND BRIXTON RAILWAY BILL.

Petition of THE LONDON AND SOUTH-WESTERN RAILWAY COMPANY.

25th April, 1884. — (Before Mr. PEMBERTON, M.P., Chairman ; Mr. HINDE-PALMER, M.P. ; Mr. MELDON, M.P. ; Sir JOHN DUCKWORTH ; Mr. BONHAM-CARTER ; and Hon. E. CHANDOS LEIGH, Q.C.)

Railways, New—Forming, in Connection with existing lines, a rival route, created piecemeal—Competition, by means of Running Powers and Working Agreements.

The bill authorised the construction of a short line from Hayden's-lane to Brixton, where it joined the London, Chatham and Dover railway, over which the bill gave the promoters running powers, as well as power to enter into working agreements with that company. The petitioners were joint owners of a railway from Hayden's-lane to Streatham, where their railway joined that of the London, Brighton and South Coast company, by means of running powers over which railway and over the London, Chatham and Dover railway, the petitioners carried through traffic from Hayden's-lane to the Ludgate-hill terminus of the latter company. They complained that the effect of the bill would be, by means of the running powers over, and working agreements with, the London, Chatham and Dover company, to enable traffic to be carried between Hayden's-lane and Ludgate-hill in competition with their own route :

Held, that the petitioners were entitled to be heard generally on the ground of competition.

The *locus standi* of the petitioners was objected to, because (1) the proposed railway will not compete with the London and South-Western railway ; (2) the running powers used by the London and South-Western railway company over the railways of the London, Brighton and South Coast railway, and the London, Chatham and Dover railway, do not confer a right on the petitioners to be heard ; (3) the petition does not allege or show that the petitioners are affected by the bill in such a manner as to entitle them to be heard according to practice.

Q.C. (for petitioners): The bill is the construction of a railway from Hayden's-lane to a point a little to the west of where it forms a junction with the London, Chatham and Dover railway, with powers to run over that company's railway into Brixton station, and to enter into working arrangements with them. The Hayden's-lane line of the proposed line will be only a little distant from the Hayden's-lane line of the Tooting, Merton and Wimbledon of which we are joint owners with the Brighton and South Coast railway company. The Tooting railway joins the London, Chatham and South Coast railway at Streatham, and the London, Chatham and Dover railway have running powers over the latter's railway as far as Tulse-hill, where it joins the London, Chatham and Dover railway and have very special running powers over that company's railway between Tulse-hill and Ludgate-hill in virtue of our having paid £316,000 to enable the London, Chatham and Dover railway to complete that line and to carry their line with duplicate rails in order to accommodate our traffic. The proposed railway will be closely parallel to our route between Hayden's-lane and Loughborough, and we claim it is justified generally on the ground of competition with traffic going to Ludgate-hill, which will be carried in competition with us by the London, Chatham and Dover company working the proposed railway. (*Hounslow and Uxbridge Railway Bill, 1878, 2 Clifford & Sons, 105; Beaconsfield, &c., Railway Bill, Vol. 3, 126.*)

CHAIRMAN: It is just the same as if you were in possession of a line yourselves the line from Hayden's-lane to Ludgate-hill. Mr. Manning, Parliamentary agent (for promoters): The provisions contained in the bill to enter into working agreements with the London, Chatham and Dover railway company may never be carried out, as they require the approval of that company, and we cannot be said to be at Brixton, as our line stops at Brixton.

CHAIRMAN: Can you refer us to any case in which a petitioning company has no right to be heard against a proposed line on the ground of competition, where the petitioners' petitions in respect of a line partly run over?

Mr. Manning: I contend that they cannot be heard on the question whether or not we are running powers into Brixton station. (*London and Eastbourne Railway Bill, 1883; 3 Hansard, Rickards, 299.*)

CHAIRMAN: That case does not seem to point. The question is purely one of competition. The contention against you is

that your new line may take some of the traffic which the London and South-Western railway at present carries. Your line is a line into London by means of running and working powers with the London, Chatham and Dover railway company.

Manning: There is no agreement for working powers scheduled to the bill.

The CHAIRMAN: Consistently with the decisions of this Court, we cannot shut out the petitioners. We think that they are entitled to be heard upon the ground of competition.

Agents for Petitioners, *Bircham & Co.*

Agent for Bill, *Manning.*

TREFERIG VALLEY RAILWAY BILL.

Petition of THE MARQUESS OF BUTE.

1st April, 1884.—(*Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE-PALMER, M.P.; Mr. PARKER, M.P.; Sir JOHN DUCKWORTH; Hon. E. CHANDOS LEIGH, Q.C.; and Mr. BONHAM-CARTER.*)

Docks—Competition—Diversion of Traffic—Railway Company as Dock Owners—Railway promoted by Competing although nominally by Independent Company—Competing Company already working Railways of Promoters—Power to Competing Company to Work and Lease proposed Railways—Bill in Breach of Agreement with Petitioner—Remedy at Law.

The bill authorised the construction of a short railway, nominally in the hands of the promoters, who were an existing railway company, but whose railways were worked by a third company, the Taff Vale railway company. The bill empowered the promoters to lease the proposed railway to the Taff Vale company, as well as their existing railways already worked by that company. Under these circumstances the petitioners contended that the scheme proposed by the bill was really a scheme of the Taff Vale company, although not promoted under their name and seal, a view which was adopted by the Court. The Taff Vale company were owners of a dock at Penarth (with a railway in connection with it) which was in competition with the docks of the petitioner at Cardiff, and that company had originally (1836) proposed to

construct a railway between the same points and for a similar purpose (viz., the development of docks at Penarth) as that proposed by the bill, but had abandoned the project owing to an agreement come to with the petitioner's predecessor in title in 1849. One of the covenants in that agreement was that the Taff Vale company would do all in their power to procure the shipment of traffic brought to Cardiff and its immediate vicinity at the petitioner's Bute docks. The petitioner had brought an unsuccessful action in 1866 against the Taff Vale company for acquiring docks at Penarth in contravention of the agreement of 1849, and he contended that the bill was a further breach of that agreement, both as regards the construction of a railway practically the same as that then abandoned, and also the development of traffic at his own docks, and that he ought to be heard to procure the insertion of protective clauses against the diversion of traffic from his docks to the docks of the Taff Vale company at Penarth, along the proposed railway. The petitioner did not, however, seek to be heard generally against the bill. It was urged on behalf of the promoters that the remedy of the petitioner, if any, would be by an action at law, for breach of covenant, and that the bill did not affect that remedy:

Held, however, that the petitioner was entitled to be heard against the clauses of the bill authorising the Taff Vale company to work over and use the proposed railways and to lease them, and so much of the preamble as related to those clauses.

The *locus standi* of the petitioner was objected to, because (1) no lands, property, or rights of his will be taken or interfered with; (2) the bill contains no provision affecting him; (3 and 5) the petition discloses no facts or interests entitling him to be heard according to practice; (4) the promoters have no interest in the discussion between the petitioner and the Taff Vale railway company respecting the alleged diversion of traffic or otherwise. The present bill will not prejudice or affect such questions inasmuch as the railways thereby proposed are

merely short branches or extensions of their existing railway, and can neither assist any diversion of traffic nor improve the means of competition between rival docks.

Bidder, Q.C. (for petitioner): The bill is promoted nominally by a company called the Treferig railway company, but really by the Taff Vale company, who are the workers of the Treferig railway. The bill authorises the construction of a short line, which will form part of the Taff Vale railway system, and will become a feeder of the Penarth docks, which are close to and in competition with the petitioner's Bute docks at Cardiff. The Taff Vale company are lessees for 999 years of the whole of the undertaking of the Penarth Harbour dock and railway company, and they are therefore the owners as well as the occupiers of the docks and harbour at Penarth. By clause 29 of the bill it is proposed to empower the company and the Taff Vale company to enter into agreements whereby the entire undertaking of the company, including the railways for which Parliamentary powers are now sought, may be transferred and leased to the Taff Vale railway company.

The CHAIRMAN: Are the Taff Vale company themselves lessees under the Marquess of Bute?

Bidder: They are lessees of the whole of one side of the West Bute dock at Cardiff, under the Marquess of Bute for 250 years. The Taff Vale railway company were incorporated in 1836, with power to make a main line, since completed, and also a branch line commencing about six miles north of Cardiff, and terminating on the sea coast at a place called Cogan Pill, about a mile and a-half from the Bute docks, with power to the Taff Vale company to erect shipping staiths and wharves there, but the construction of the branch line was abandoned, and for this reason:—The Taff Vale company were desirous of obtaining convenient wharfage accommodation on the late Marquess of Bute's land, close to the West Bute docks, and entered into negotiations with him for that purpose, but having regard to the effect which the construction of the authorised branch railway to Cogan Pill might have in diverting traffic from his docks to Penarth, the late Lord Bute made it a condition of his granting them the land they required, that they should abandon the construction of the railway to Cogan Pill for ever, and that "They should cause and procure, so far as they should be able, all minerals, merchandize, and goods carried, or to be carried, along their line of railway to be shipped and unshipped at the Bute docks so as to give the owners of such docks the benefit of the trade or traffic arising in respect

Before, however, the lease and could be completed the late Marquess of Bute, but the lease was granted and the incorporated with it upon those a lease for 250 years, dated 1st 1849, from the late Marquess's the Taff Vale company, and there additional covenant in the lease, that the company would "cause and procure they should be able all merchandise goods, which should be unshipped at port of Cardiff and carried or transported conveyed upon or along the said railway or any part or branch thereof, shipped in the Bute ship canal or in the Bute basin or cut belonging thereto." The proposed by the bill is really the same as the Cogan Pill branch in the Taff Vale railway Act, 1836, the company agreed to abandon for 1846 and 1849, and we say that this is a Taff Vale company's scheme, the breach of the agreement come to with the Marquess of Bute and the covenants in the lease of 1849. By the Ely and Railway Act, 1856, a company created under that name for construction and shipping places on the banks of the Ely close to Cogan Pill, and in 1857 the name of that company was changed to the Penarth harbour railway company, and additional instruction given to that company both for railways and a dock. In 1862, when authorised at Penarth by the Acts of 1857 had been actually stopped, the company came forward, and even in 1868, an agreement was finally concluded between them and the Penarth company, for the entire undertaking of the harbour, dock and railway company to be given to the company for 999 years. Previously to the agreement of that agreement between the Marquess of Bute, the trustees of the late Marquess of Bute protested against its conclusion as involving a breach of a breach of covenant, but without effect. In 1866 the trustees commenced proceedings against the Taff Vale company for breach of covenants contained in the lease of 1849. The case was, however, decided in favour of the Taff Vale company, the Lord expressing regret in his judgment of Lords, at having to decide in favour of the company on the verbal construction of the covenants of the lease, although in the spirit of the agreement entered into with the company. The bill is a direct attempt by the Taff Vale company to

depart from the spirit of the agreement. The company is empowered by clause 29 of the bill, to lease the proposed railway, and is responsible for the whole scheme. The petitioner, the present Marquess of Bute, has, on several occasions, procured clauses for his protection to be inserted in Acts of Parliament since the unsuccessful result of the litigation of 1866, *e.g.*, in the Llantrissant and Taff Vale Railway Act, 1870, which was, like the present, really the scheme of the Taff Vale company; and again in an Act of 1881 obtained by the Penarth company and the Taff Vale company jointly. We claim to have similar clauses for our protection inserted in the present bill, but do not ask to be heard against the preamble or scheme generally.

Balfour Browne (for promoters): Even if this bill had been promoted by the Taff Vale company, the petitioner would not have been entitled to be heard. If the petitioner complains of breach of agreement he has his remedy at law, and this bill does not affect either the agreement or his remedy. Clause 29 of the bill does not absorb the Treferig company.

Mr. Chandos Leigh: It gives power to the Taff Vale company to lease the proposed railway.

The CHAIRMAN: I think on the face of the petition that the Treferig company are shown to be a mere dummy. They are now worked by the Taff Vale company.

Browne: We are the owners of our own line, and we propose to make certain new lines.

The CHAIRMAN: You are not working your existing railways yourselves, and you propose to take powers to make new railways and give power to the Taff Vale company to work your whole undertaking. We cannot resist the conclusion that it is a Taff Vale scheme.

Browne: Supposing the Treferig company to have an agreement with the Taff Vale company, this Court will surely not give the petitioner any better remedy against the latter company than the Court of Law have given him in respect of the agreement to which reference has been made, and so reverse the decision of the House of Lords.

The CHAIRMAN: The petitioner says that the bill is a further encroachment upon his rights under the agreement, the spirit of which you have already broken. The Committee on the bill would not have power to rectify the past agreement, but they would have power to insert a clause to prevent the Taff Vale company encroaching further upon the spirit of the agreement.

Browne: As to protective clauses in favour of the petitioner in other Acts, it has not been

shown how they came to be inserted, whether by agreement or after opposition before a Committee. The petitioner by not claiming to be heard against any part of the preamble shows that he is not complaining of anything in the bill, but only asks to be heard to get something inserted in it for his benefit.

Bidder: I will say both now and when I go before the Committee, that the petitioner only claims the same protection of his rights against the Taff Vale company as Parliament has already given him in other cases.

The CHAIRMAN; We must, if possible, point out the particular clauses, as we do in all cases where we do not allow a general *locus standi*.

Bidder: If you were to give me a *locus standi* against clauses 27 and 29 (Taff Vale company to have power to work and use, and to lease the proposed railways) that would do; that would enable us to bring up clauses for protective purposes.

Browne: I think it right to point out that there is a part of the preamble relating to those clauses [*reads words*].

The CHAIRMAN: Those words in the preamble had escaped our notice. The *locus standi* of the petitioner will extend to them as well as the clauses.

Locus standi of the Marquess of Bute Allowed against clauses 27 and 29 and so much of the preamble as relates thereto.

Agents for Petitioner, *Grahames, Currey & Spens*.

Agent for Bill, *Bell*.

WATER PROVISIONAL ORDERS (No. 2) BILL (ALFERTON AND SUDBURY WATER ORDER).

Petition of THE COLNE VALLEY WATER COMPANY.

16th May, 1884.—(*Before Mr. PEMBERTON, M.P., Chairman; Mr. HINDE-PALMER, M.P.; Mr. PARKER, M.P.; Mr. MELDON, M.P.; and the Hon. E. CHANDOS LEIGH, Q.C.*)

Water Company, Invasion of District—Power to Supply Adjoining District by Consent—Third Company Intervening with Consent—Gas and Waterworks Facilities Act, 1870.

The Colne Valley water company, incorporated in 1873, obtained power to supply, in addition to their own district, the parish of Harrow, which was within the limits of the Harrow water company, provided that

company gave their consent. A third water company now promoted a Provisional Order, and by agreement with the Harrow company under seal, the promoters included within their limits of supply certain hamlets in the parish of Harrow. The Colne Valley company petitioned on the ground that the bill would prevent them from supplying the hamlets in question, even though they obtained the assent of the Harrow company :

Held, that as the interference under the bill was only with limits of supply which the petitioners might possibly acquire by consent, and as by the agreement the Harrow company prevented themselves from giving such consent, the petitioners had no interest entitling them to be heard.

The *locus standi* of the petitioners was objected to, because (1) the order contains no power to take or interfere with any land, property or rights of theirs; (2) the limits for the supply of water by the promoters as defined in clause 4, expressly exclude those of the petitioners; (3) the Harrow waterworks company were incorporated in 1854, and their limits of supply comprised the whole of the parish of Harrow. The Colne Valley water company were incorporated in 1873, and a portion of the parish of Harrow east and north-east of the London and North-Western railway was conceded to them and included within their limits of supply; (4) part of the hamlet of Wembley, at present supplied by the promoters, is situated eastward of the London and North-Western railway, but is excluded from the limits defined in the Order, because of the objections of the petitioners, although they do not now and never have supplied water there, and have no mains or pipes within miles of the place; (5) the Harrow waterworks company, within whose limits the remainder of the said hamlet is situated, have given their consent under seal with the approval of their shareholders, to the promoters continuing to supply portions of those hamlets westward of the London and North-Western railway, as defined in clause 4 of the Order; (6) the petitioners have obtained no such consent hitherto as is referred to in their petition, and have no rights, statutory or otherwise, westward of the railway, or within any other portion of the limits defined in the Order; and although the words "without the consent of the Harrow waterworks company, under the company's seal," may be held to give

to the Harrow company they do not were not intended to give the petitioners any rights, but rather to facilitate their supply from the Harrow company's district west of the railway; (7) the petitioners' interest entitling them to be heard.

Parliamentary agent (for the petitioners): The question turns upon clause 4 of the provisional Order, which defines the petitioners' limits of supply as the portions of the parish of Harrow, not included in the limits of the Colne Valley water company, and the parishes of Twyford, Perivale, Greenford and Northolt, "provided always that this Order shall interfere with the rights of the Colne Valley waterworks company, or prevent that company or the Harrow waterworks company from carrying water mains through the said hamlets for the purpose of carrying water to places" not within the promoters' limits of supply; "but the companies shall not supply water to any of the said hamlets within the promoters' limits." By our Act of 1873 the whole of Harrow was included in our limits of supply, but the Act also provided that we should not supply water to any places in certain portions of that parish without the consent of the Harrow waterworks company. We have yet supplied the hamlets to which this Order refers, but the effect of clause 4 of the Order would be to cut us off entirely from supplying those hamlets, even though we should obtain the consent of the Harrow waterworks company. It is in our Act preventing us from supplying those hamlets without the consent of the Harrow company were not intended as a restriction, but as a favour to us. We are now in agreement with that company, and may possibly obtain their assent to supply the whole of Harrow, but if these large portions are cut off we should find it almost impossible to supply the whole of Harrow effectually. It is true that the promoters disclaim any interference with our limits, but the whole of Harrow is within our limits, subject only to the condition of our obtaining the consent of the Harrow company. If, therefore, the promoters supply portions of certain hamlets within the parish of Harrow, they do not interfere with our limits.

CHAIRMAN: They interfere with limits which you may possibly acquire by consent. Parliamentary agent (for promoters): The power of the petitioners to supply the portions of Harrow west of the railway with the consent of the Harrow company gives the petitioners the option. The Harrow water company has the option; and that company have

agreed under seal that we shall supply the hamlets mentioned in the Order and certain portions of the Harrow district west of the railway.

The CHAIRMAN: By that agreement the Harrow company prevent themselves from exercising the option they now possess in favour of the Colne Valley company?

Bell: Yes; and clause 4 in this Order is settled with the advisers of the Harrow waterworks company. Indeed, the promoters would not have been here without the consent of that company, because under the Gas and Waterworks Facilities Act, you cannot go into the district of any other company without their absolute consent.

Foss: The agreement is conditional upon the passing of the Act; it does not come into operation until the Act has passed.

The CHAIRMAN: Looking at the agreement, it does not seem to the Court that the interest of the petitioners is affected in such a way as to entitle them to be heard. If the bill passes, and the agreement takes effect, the Harrow waterworks company deprive themselves of the power of giving their consent to the supply by the petitioners of the districts in question. On the other hand, if the bill does not pass, the possibility that the Harrow waterworks company may give such consent will revive.

Locus standi Disallowed.

Agent for Bill, *Bell*.

Agent for Petitioners, *Loch*.

WEST GLOUCESTERSHIRE WATER BILL.

Petitions of (1) WILLIAM BAMPFIELD COGAN AND OTHERS; (2) BRISTOL WATERWORKS COMPANY; (3) OWNERS AND OCCUPIERS OF MILLS AND WORKS ON THE RIVER FROME (WILLIAM PEARSE AND OTHERS.)

13th June, 1884.—(Before Mr. PEMBERTON, M.P., Chairman; Mr. PARKER, M.P.; the Hon. E. CHANDOS LEIGH, Q.C.; and Mr. BONHAM-CARTER.)

Water Supply—Water in Disused Mining Shaft, taken — Underground Water — River, water drawn off from, by Underground Channel—Grand Junction Canal Company v. Shugar—Legal issues—Court will not give Decision which precludes either Party from raising Legal Issues elsewhere—Diversion of Water from River as ground for general Locus Standi—Scientific evidence, prima facie Case of Injury supported by.

A water company proposed to appropriate as a reservoir a disused mining shaft, and to pump and use the water there collected. This shaft was situated 160 feet from the river Frome and was connected with the river by a culvert which carried off the overflow from the shaft. The bill was opposed by three sets of petitioners having water rights on the river who alleged that the water in the shaft came by percolation from the river, and therefore that under the bill the promoters, by pumping water from the shaft, would really derive their supply from the river, in whole or in part, and thus seriously diminish the flow of the stream. The promoters contended that the water in the shaft came from underground sources, and that the petitioners, accordingly, had no right over it. Evidence having been called which established a *prima facie* case for the petitioners, it was next contended that they were only entitled to a limited *locus standi* against the works clause, inasmuch as the bill took no powers over the river, and would only occasion the petitioners consequential injury, if any :

Held, however, following the course of decisions by the Court in like cases, that the petitioners were entitled to be heard generally against preamble, the water in the shaft in question forming the only source of supply proposed in the bill.

Petitioners relied on a decision in the House of Lords as to the taking of water from a river by underground channels or otherwise. The promoters contended that this decision was inapplicable, and were also prepared with scientific evidence to rebut the *prima facie* case made out by an expert called on behalf of the petitioners :

(*Per Cur.*) It is not the province of the Court to decide between the contradictory evidence of scientific witnesses, nor will the Court give a decision upon points of law which may preclude either of the parties from contesting these points elsewhere.

The *locus standi* of W. B. Cogan and others was objected to, because (1) the only waters which the promoters are by the bill authorised to take and divert are the waters of the pit-

shaft mentioned in clause 24 of the bill; these are underground waters, derived from unknown sources, and the petitioners have no right or title to these waters or to the user thereof; (2) the culvert or drain mentioned in the petition, connecting the pit-shaft with the river Frome, was constructed by the owners of the pit-shaft for the purpose of enabling them from time to time as occasion required to pump the water from the pit-shaft into the river, and the petitioners have had the benefit of the water so pumped into the river without any consideration being made by them to such owners; but this has not conferred upon the petitioners any prescriptive or other right to the waters of the pit-shaft; (3) the bill does not confer upon the promoters any power of taking, diverting, or interfering with the waters of the river Frome or of any waters which now flow into it, and the promoters deny that the taking of the water in the pit-shaft will in any way whatever divert or draw down the water of the river Frome. It is not alleged, and is not the fact, that the water from the river flows in any defined channel into the pit-shaft; and it is the fact, and was proved before the Lords' Committee on the bill, that the bed of the river and the strata between the river and the pit-shaft are impermeable, and that there is not and cannot be any connection between the river and the pitshaft; (4) the bill does not confer upon the promoters any powers of taking, diverting, using, or interfering with any waters, land or property belonging to the petitioners or in respect of which they have any rights; (5) the opposition of the petitioners is not a *bond fide* one on their part, but is carried on at the instigation and in the interests of the Bristol waterworks company, and the costs of the petitioners are being paid either wholly or in part by that company, as was proved and admitted before the Lords' Committee on the bill; (6) the petitioners allege no grounds and show no interest entitling them to be heard, and the mere fact that notices were served upon them *ex abundante cautela* does not give them a *locus standi*.

The *locus standi* of the Bristol waterworks company, and of the owners and occupiers of mills and works, &c., was objected to on similar grounds. Other objections to the *locus standi* of the Bristol waterworks company were that the competition alleged in the petition, and the alleged encroachment upon the limits of supply of the petitioners, did not entitle them to be heard; but this portion of the petitioners' case was not gone into.

Jeune (for W. B. Cogan and others): The petitioners own or occupy business premises on the

river Frome, and use the water of the river for their works. At some distance up the Frome, and not far from the river bank, there is a disused ironstone mine. In the development of this mine, waters were tapped and flowed into the mine, which were kept under as long as the mine was worked, but when it was disused, these waters filled the pit, and flowed into the river. It is now proposed to turn the disused pit into a reservoir for the use of the promoting company. We say that the effect will be, not only to cut off the overflow, which now reaches the river through a culvert, but to draw into the pit the water in the river itself. This was the result when the mine was worked; water was drawn off from the river and the mill-pond adjoining. If this were wholly subterranean water, we should have no remedy, but when water, though drawn into an underground channel, is replenished from water flowing in a defined course, the result is the same as if the latter were taken by means of an open-air culvert. This is really a legal question, turning upon a point of law which has been decided.

The CHAIRMAN: We had before us the same question in the *London and South-Western Spring Water Bill*, 1882 (3 Clifford & Rickards, 179); and the *Croydon Corporation Water Bill* (*ante*, p. 385). There it was alleged that, though the streams were underground, yet they flowed in an ascertained course; and I think we decided that, at all events, we would not deprive the parties of the opportunity of contesting that point elsewhere.

Pembroke Stephens, Q.C. (for promoters): In the *Spring Water Bill*, the petitioners called engineers, who had made a study of the subject for years, to prove that the water did flow in an ascertained channel. There was also the *Tilbury and Gravesend Tunnel Junction Railway Bill*, 1882 (3 Clifford & Rickards, 239).

Jeune: Here the petitioners allege that the river feeds the pit, which then sends its overflow back into the river. If necessary, we can show by evidence that, when the mine was worked, the water from the river found its way into the mine; and if it is pumped out, water will again be drawn from the defined channel of the river.

Stephens: Through a defined channel?

Jeune: No; but from a defined channel; it is drawn through the bed of the river by an underground passage into the mine, but the water comes from the over-ground and defined stream. If water is thus taken from a river, it does not matter how it is taken. Everybody who lives on a river bank has a right to the full supply of water in that river, and whether the water is taken by a siphon, by buckets, by a

conduit or underground pipe, or by the natural formation of the ground, in none of these ways can a riparian owner be deprived of the proper use of the water in the river: (*Grand Junction Canal Company v. Shugar*, L.R. 6 Ch. Ap. 493). This case was mentioned in Committee in the other House, which granted a *locus standi*.

Stephens: The *locus standi* of one set of petitioners was argued and refused. In another case a distinction was shown, and counsel for the promoters said that, assuming what was in the petition to be capable of proof, he should not resist the *locus standi*. Afterwards the case was tried out; the allegations in the petition were found to be not capable of proof; and we therefore now object to the *locus standi*.

Mr. CHANDOS LEIGH: Do you dispute the allegation that the water in this pit runs from the defined channel of the river into the pit, and that the pit, if made a reservoir by the promoters, would be a subterranean communication by means of which the waters of the Frome would be drawn off?

Stephens: We deny that statement distinctly.

The CHAIRMAN: If that be so, may we not set aside the point of law which seems to be involved, because this Court would not be inclined to give such a decision on a point of law as would prevent one of the parties from discussing it elsewhere?

Stephens: We do not admit that the effect of the decision by the House of Lords in the *Grand Junction Canal* case is what it was represented as being; and the principle laid down by this Court in many decisions is that interference with underground water gives no *locus standi*. In the *London and South-Western Spring Water* case, the evidence of experts satisfied the Court that the water flowed underground in a defined channel. The *Tilbury and Gravesend* case was decided against the petitioners upon argument and not upon evidence.

Mr. CHANDOS LEIGH: In that case the petitioners were a water company whose works were two miles from any part of the proposed railway.

The CHAIRMAN: We did not in that case overrule the *London and South-Western Spring Water* case; but in our opinion the point at which the alleged abstraction would take place was too remote to entitle the petitioners to a *locus standi*.

Bidder, Q.C. (for the Bristol waterworks company): That was a decision upon the facts.

Stephens: In the *Windsor and Eton Water* case, 1868 (1 Clifford & Stephens, 16), it was proposed to sink a well upon the banks of the Thames. The conservators of the Thames

petitioned, alleging that water would thereby be drawn off from the river, but a *locus standi* was refused because the water came into the well as underground water, not as Thames water.

Bidder: That was before the decision of the House of Lords in the *Grand Junction Canal Company v. Sluizer*; nor did the *Windsor and Eton Bill* confer any power of abstracting water from the Thames. No works were authorised by the bill, and the wells in question had existed for 150 years. Our petition raises the same case as that presented by Mr. Cogan, as we allege that we are the owners of a mill in the parish of Frampton Cotterell, which derives its power from the river Frome, and will suffer from a diminished supply if the promoters are allowed to divert the water in the way they propose.

Stephens: There is a continuous chain of decisions by this Court in favour of our contention here:—*South Staffordshire Waterworks Bill*, 1866 (Smeth., 2nd Ed. app. 116); *Southport Water Bill*, 1867 (1 Clifford & Stephens, 13); *Windsor and Eton Water Bill*, 1868 (*Ib.* 16); *Ince Water Bill*, 1871 (2 Clifford & Stephens, 199); and *Tilbury and Gravesend Tunnel Railway Bill*, 1882 (3 Clifford and Rickards, 239).

The CHAIRMAN: The principle we lay down is this:—We decline to decide any point of law if, by reason of that decision either party would be deprived of the power of going elsewhere. In this case, without going into the question of law, what we want is *prima facie* evidence that, if the promoters use this pit, it will have the results which the petitioners anticipate.

Stephens: A decision upon *prima facie* evidence, without reference to the state of the law, would in effect be deciding the legal point against us.

The CHAIRMAN: No; you will have an opportunity of discussing everything in Committee.

Mr. PARKER: I suppose the promoters take this ground—that, in law, though it be shown that water is drawn from a defined channel, whether above ground or underground, yet if intermediately it goes through what may be called a sponge, and does not flow all the way in a defined channel, any landowner has a right to take it?

Stephens: That is one point. Another part of my argument is that here there is no known defined channel through which the water flows to the point where we intercept it, so that it can be identified as surface water at all.

Mr. Edmund Lloyd Owen, mining engineer, was then called for the petitioners, and said that during the operations of the Iron Mining company, he sunk the shaft from which the pro-

motors proposed to take water. In driving the headings north he found that water percolated in considerable quantities from the mill pond, and notwithstanding the use of six large pumps the mine was frequently flooded. To test the source of the flooding, he directed that a bushel of flour should be mixed with water and put into the mill pond. Then the limpid water which had previously come into the shaft, through the rock next the mill-pond, became of a milky colour. At one time the tenant of the mill put up some planking, which increased the height of the water in the dam. The result was immediately felt in the mine in a larger ingress of water through the interstices of the rock.

The CHAIRMAN: This seems to be *prima facie* evidence in support of the petitioners' allegations. I daresay the promoters have scientific evidence to rebut it; but it is not the province of this Court to decide between the contradictory evidence of scientific witnesses. (*To witness*): How far are the ironworks from the river?

Witness: 161 feet.

The CHAIRMAN: You are aware of the operations contemplated under the bill. In your opinion would they have any effect upon the mill-pond or any part of the river?

Witness: If the mine is converted into waterworks, three-fourths, if not a larger proportion, of the water will be drawn from the mill-pond and the river Frome. The company will then distribute this water, and the owners of water rights below will be entirely deprived of their water and will have no compensation.

The CHAIRMAN: In your opinion, would the works contemplated by the bill affect the river lower down than the mill of the Bristol waterworks company?

Witness: It would affect all the petitioners, and all owners of water rights, from Frampton to Stapleton, and into Bristol.

Jeune: Upon this evidence we claim a general *locus standi*, as was given against the *London and South-Western Spring Water Bill*.

Stephens: The petitioners only have a right to appear against the works' clauses, which will do the particular injury alleged. *Locus standi* must always bear some relation to the proposals in the bill. Here the only power we take affecting the petitioners is by clause 24, sub-section E, "the taking, collecting, diverting, impounding and using the waters in or arising or flowing from the pit-shaft lately belonging to the Frampton Hematite mining company." A general *locus standi* is given only in cases in which you take powers over the water of a particular stream and interfere with the flow of that stream all the way down.

petitioners only allege that under-
umping may have indirect results in
ng the waters of the river; but that
r of argument, and hangs wholly on
' clause.

: We want to fight the preamble,
irms the expediency of taking this
rder to supply a certain district with
f the preamble is proved, what is the
ur fighting clause 24? Continuous
by this Court show that a general
di is always given in these cases.

s: But for this case of resulting in-
petitioners would have no *locus standi*
he bill takes no power over the river;
it does take is over the water in the
d the petitioners can only say that, in
ice of pumping underground water,
ay happen to the river some distance
er these circumstances it is enough if
oners are heard against the particular
, as they allege, may have those con-

AIRMAN: In the *Croydon Corporation*
l, which contained provisions relating
other matters besides water, the *locus*
s not limited. In this case we think
facie case has been established on
all the petitioners that they may be
y affected by the bill in the only place
the promoters seek for any water
That being so, the petitioners are
o a general *locus standi* against the

landi of all the petitioners *Allowed*.

for W. B. Cogan and Others, *Torr*

for Bristol Waterworks Company,
Co.

for Owners and Occupiers of Mills
s on the River Frome (W. Pearse and
Tahourdin & Hargreaves.

for Bill, *Ball*.

WEST HAM LOCAL BOARD BILL.

of (1) THE GREAT EASTERN RAILWAY
Y; (2) MIDLAND RAILWAY COMPANY.

ch, 1884.—(Before Mr. PEMBERTON,
Chairman; Mr. HINDE-PALMER, M.P.;
BKER, M.P.; Sir JOHN DUCKWORTH;
L. CHANDOS LEIGH, Q.C.; and Mr.
I-CARTER.)

and Sidings—Level Crossings—Tram
longing to Railway Company—Local

*Authority acquiring Roads and freeing them
from Toll—Railway and Level Crossings
Scheduled—Easement sought by Local Autho-
rity over—Landowners' locus standi of Railway
Company.*

A local authority sought power, *inter alia*, to
acquire and free from tolls certain roads
crossed on the level by the Great Eastern
railway and by a tram line vested in
and worked by that company; and at one
point the railway and sidings were within
the limits of deviation and were scheduled
under the bill. A private road belonging to
the railway company was also affected. A
limited *locus standi* was conceded, but the
company claimed a landowners' *locus*
standi against the bill. For the promoters
it was urged that the railway and sidings
had been scheduled only for the purpose of
acquiring an easement over the level
crossings in connection with the road at
that point. The bill contained a clause
saving the rights of the Great Eastern and
Midland companies; and the latter, not
being affected to the same extent, accepted
a limited *locus standi*:

Held, however, that the Great Eastern company
were entitled to be heard generally against
the bill.

The *locus standi* of the Great Eastern rail-
way company was objected to, because (1) no
power is sought to enter upon, take or use any
lands belonging to them; (2) the land upon
which their tram line is laid, so far as it is in-
cluded within the limits of deviation, does not be-
long to them; (3) they have no other right in the
North Woolwich road, where it is crossed on
the level by their Woolwich branch railway,
than that of maintaining that railway across the
road; (4) the powers sought by the bill, so far as
regards the said road, do not therefore affect
the petitioners, and they are not entitled to be
heard against the grant of those powers or of
the powers sought by the bill with reference to
the Lilliput-road; (5) the interests of the
petitioners in the roads referred to in the bill
are not such as to entitle them to be heard
upon the question of the repair of those roads
even if that question were affected by the bill,
nor are they entitled to be heard as ratepayers
against a bill promoted by the authority re-
presenting them in that capacity; (6) the

user, by the local board, of the roads and level crossings mentioned in clause 23 of the bill (which are new streets within the meaning of the Public Health Acts) will not affect any rights of the petitioners therein, and the petitioners are not entitled to object thereto, nor to the acquisition by the local board of the lands referred to in clauses 8 and 9 of the bill; (7) the petitioners show no interest entitling them to be heard.

The *locus standi* of the Midland railway company was objected to on similar grounds.

Pember, Q.C. (for Great Eastern railway company): The bill authorises the local board to acquire and free from toll the North Woolwich-road and the Lilliput-road; and by clause 7 nothing in the bill is to prejudice the rights of the Great Eastern railway company to the free use of certain level railway crossings there, or the Midland railway company to the free use of certain lines; but "none of the aforesaid companies shall, in the user of any of the rights aforesaid, hinder or interfere with the free passage of traffic, vehicular or otherwise, along the said road or roads, or portions of road or roads." The bill further authorises the board to acquire compulsorily certain lands for the purposes of a pumping station for sewage and other works, of a river wall, and a landing place for passengers. The North Woolwich-road and Lilliput-road immediately adjoin the North Woolwich railway of the petitioners and the Victoria dock tram-line which forms a junction with the North Woolwich railway. This tram line is vested in the Great Eastern company and worked by us. The North Woolwich-road crosses our North Woolwich branch, and also the tram line, on the level. We also own a piece of private road which will be affected by the bill. A limited *locus standi* is conceded to us by the promoters, but we claim to be heard against the bill generally as landowners. At a certain point our lines of railway are actually within the limits of deviation, and could be taken under the powers in the bill.

Michael, Q.C. (for promoters): The railway and sidings of the petitioners crossing this road were scheduled, not for the purpose of taking them, but of acquiring an easement over them; there is no intention to take an inch of property from them. We concede a *locus standi* to both railway companies against clause 7.

Saunders, Q.C. (for Midland railway company), accepted this limited *locus standi*.

The CHAIRMAN: We think the Great Eastern railway company are entitled to a general *locus standi* as landowners.

Locus standi of Great Eastern railway company Allowed.

Locus standi of Midland railway company Disallowed, except as to clause 7, and so much of the preamble as relates thereto.

Agent for Great Eastern Railway Company,
W. F. Fearon.

Agents for Midland Railway Company, *Beale, Marigold, Beale & Groves*.

Petition of (3) MESSRS. TATE & SONS.

Level Crossing—Private Road, Easement over, taken by Local Board—Interference with access to Business Premises—Special Rights of Petitioners over Level Crossing affected.

Clause 23 of a bill promoted by the local Board of West Ham enabled the board to exercise rights of way over a private road abutting upon and forming an access to the petitioners' works. The petitioners had constructed a private tram-line over this same road, to connect their works with a railway, and they had the right to use a level crossing over the railway, this level crossing being approached from the private road, and being situate opposite to their works. The petitioners objected to the rights of way conferred by the bill upon the local board over the road and level crossing, as interfering with their own use of them. The petitioners also claimed to be heard against clause 10 of the bill, which gave the local board certain powers to divert, stop up, &c., roads and footpaths within certain parishes.

A limited *locus standi* was conceded to the petitioners against clause 23 of the bill, so far as regards the level crossing, but not against clause 10, as it was contended that this clause did not affect them:

Held, that their *locus standi* should be allowed against clause 23 and so much of the preamble as related thereto.

The *locus standi* of Messrs. Tate & Sons was objected to, because (1) no land, house, property, right or interest of theirs will be affected under the bill; (2) no powers are sought by the bill which would entitle the promoters to commit a nuisance as apprehended

petitioners; (3) clause 10 will not and not possibly affect any roads or property in which the petitioners are interested; (4) the petitioners have no rights in the Factory-road or in the level crossings thereof of the Great Eastern railway entitling them to be heard against clause 23; nor will there be any interference with the petitioners nor with the level crossing or the railway sidings mentioned in the bill by the exercise of the powers contained in clause 23; (5 and 6) the bill contains no provisions affecting the petitioners and they have no interest entitling them to be heard.

Mr Browne (for the petitioners): By the bill the local board propose to acquire for the works and landing places certain lands on the north side of the Thames; they seek power to use portions of Factory-road, a private road made by the petitioners, and a level crossing over the North Woolwich branch of the Great Eastern railway. The petitioners own an extensive gas refinery abutting on Factory-road or Green-lane, which is a private occupation road giving access to our premises and to other works and property. We also possess a right of way to our premises over the level crossing of the North Woolwich branch of the Great Eastern railway, which is immediately at the entrance gates to our works. By the bill, in connection with the Great Eastern railway, a tramway or siding has been laid across Factory-road, connecting the North Woolwich branch with our premises and for the exclusive use. We object to the power in clause 23 giving the local board compulsory powers over Factory-road and the level crossing, and the powers will seriously interfere with the use of this road and level crossing. We object strongly to clause 10 of the bill which enables the local board without any notice to petitioners "to cross, open, break up, divert, stop up, or interfere with, whether temporarily or permanently, all roads, lanes, streets, footpaths," &c., within the parishes of West Ham and East Ham. Such extensive powers of interference with public and private property may be exercised most injuriously to us and ought not to be conferred on the local board. The right of way across the level crossing of the railway opposite to our premises is the property of Messrs. Tate, and presently they were the only persons who had the right to open the gates fixed at this level crossing; but their traffic has become so great that the Great Eastern company now have a right to the gates to control the traffic.

Mr Handos Leigh: Who keeps the Factory-road in repair?

Browne: Messrs Tate keep in repair half the road opposite their property, and the Gas company keep in repair the other half; but by the bill the promoters seek to turn the road into a public road. We ask to be heard against clause 10 as well as against clause 23.

Michael, Q.C. (for promoters): I will concede to the petitioners a *locus standi* against clause 23; but clause 10 only enables us, "in connection with the aforesaid embankments," to stop up certain roads, &c., and do certain works, and does not affect the petitioners.

The CHAIRMAN: Clause 10 seems to have relation only to the proposed embankments. I do not think it touches the petitioners.

Browne: Then I will take the *locus standi* conceded by the promoters.

Michael: That is with reference to the level crossing. You have no right to be heard in reference to Factory-road.

Locus standi of Messrs. Tate Allowed against clause 23, and so much of the preamble as relates thereto.

Agents for Petitioners, *Durnford & Co.*

Petition of (4) GAS-LIGHT AND COKE COMPANY.

Private road, Gas Company owning Premises abutting on—Easement sought by Local Authority—Additional traffic caused thereby—Obligation to repair Private Road—Contribution to, by Local Board, as owners of Proposed Premises—Interference with Traffic and with Access to Premises—Interference with Gas Mains and Pipes.

A gas company owned premises abutting upon a private road leading to the river, which, in common with other frontagers, they were under the usual obligations to repair. The local authority of the district sought for powers to use this road, as a means of access to a landing place and other premises which they proposed to establish on the river bank. The gas company opposed this user, on the ground of interference with their traffic and with the access to their premises, owing to the large additional traffic which would be brought upon the road under the bill. They also alleged that under the bill, which would authorise the stopping up, &c., of other roads in the district, there might be an

interference with their gas mains and pipes. For the promoters it was contended that under the bill there could be no interference with gas mains or pipes; and that the gas company only had an easement over the road in question, and could not be heard against a proposal to confer a similar easement upon the local authority:

Held, that the petitioners had no *locus standi*.

The *locus standi* of the Gas Light and Coke company was objected to, because (1) no land, gas main, road, pipe or other property of theirs is sought to be compulsorily acquired, nor are any of their rights, property or interests interfered with under the bill; (2) the purchase, under the bill, of rights and interests in the North Woolwich and Lilliput-road, for the purpose of freeing the same from toll, will not affect the mains and pipes of the petitioners or any other property or interest of theirs; (3) the Factory-road does not belong to the petitioners, nor will the use of that road, as contemplated by the bill, affect any right or interest of theirs or interfere with the access to their works; (4 and 5) the bill contains no provision affecting the petitioners, who show no interest entitling them to be heard.

Baggallay (for petitioners): The Gas Light and Coke company have many mains and pipes laid under the roads, which would be interfered with by the bill. Our gasworks also abut upon the Factory-road, which is the only means of access to our premises. We have a right of way over this Factory-road and, along with Messrs. Tate, we converted what was a piece of waste into a good road, which we have repaired for twenty years past. We therefore claim to be heard against clause 23, which gives the pro-

motors an easement over this road without any compensation to us.

Michael, Q.C. (in reply): These petitioners have an easement over Factory-road, and are trying to prevent us from obtaining a similar easement. They have no right whatever to make such an objection. They say they will be injured if we obtain this easement. The fact is, however, that under the bill we should own premises abutting upon the road and should have to contribute our share of maintaining the road, so diminishing the proportion which the petitioners would have to pay. The petitioners do not allege that they have any right in the soil of the road; and we do not interfere with their right of way by proposing to acquire a similar right. The Gas company's position differs from that of Messrs. Tate, for Messrs. Tate, or their predecessors in title, constructed the level crossing over the railway which we are going to use.

The CHAIRMAN: In respect of the petitioners' pipes laid on other people's land we do not think they have any *locus standi*. Do they allege that their access to the road or their user of it would be interfered with under the bill?

Baggallay: Considering the traffic and the character of the road there would be a material interference. The traffic to works like the gasworks is enormous, and if any further traffic went over the road we might suffer serious inconvenience and injury.

The CHAIRMAN: We must disallow the *locus standi* in this case.

Locus standi of the Gas Light and Coke Company *Disallowed*.

Agents for Petitioners, *Wyatt, Hoskins & Hooker*.

Agent for Bill, *J. C. Rees*.

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